

**FLSA-517**

March 26, 1973

This is in reply to your letter of February 5, 1973, requesting an opinion under the Fair Labor Standards Act on a proposed wage plan. Under the proposal, employees would work 12 hours per day for four consecutive days, be relieved from duty for the next four consecutive days, and then repeat the cycle. An employee who works on four consecutive 12-hour days would receive payment for 40 hours at his stated rate and for 8 hours at one and one-half times such rate. Payment for each work cycle would be made in full on the last day of the next succeeding work cycle.

We observe that under the proposed plan, payment for the first 40 hours in a work cycle and the next 8 hours in such cycle is explicitly intended to be based exclusively on the hours of work in such a 4-day work cycle and not on a workweek. In fact, the plan contemplates that there would be no designation of a workweek for any employee subject to it. For example, in the schedule you present there are seven work cycles, each starting on a different day of the week, in a period of eight calendar weeks.

Under the provisions of section 7(a) of the Act, employees are entitled to receive not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 hours "in any workweek". As further indicated in 29 CFR 778.100, et seq., the language of the statute itself requires that the workweek be the basis for applying section 7(a) of the Act. There is no provision of the law or any indication in the legislative history of the Act that Congress intended overtime to be computed on any basis other than the number of hours worked in each workweek. As agreed at the time we discussed this plan in my office, we have given the proposal careful consideration and have consulted with the staff of the Solicitor of Labor. Our conclusion is that there is no way in which we can approve the plan as satisfying the overtime pay requirements of the statute.

We do not regard the plan you propose as being analogous in principle with the plan approved in an opinion letter dated September 9, 1968, to which you refer. That letter discussed a plan which was clearly predicated on a workweek. There are methods of planning work shifts so that plants may operate a 168 hour workweek on a shift basis. See, for example, BNA Labor Relations Reporter, WHM 94:501, et seq. This and other reference sources on this subject may suggest a pay plan which is in compliance with the Act and which may at least in part meet the firm's objectives.

Sincerely,

Ben P. Robertson  
Acting Administrator  
Wage and Hour Division