

## **FLSA-785**

July 17, 1975

This is in reply to your letter of June 4, 1975, requesting our opinion with respect to the treatment under the Fair Labor Standards Act of an "efficiency pay rate" as described in your letter.

This system of payment is to be based on employee efficiency quotas developed by the Employer's engineering staff whereby the employee's rate of pay will be based on his efficiency during each hour worked. For example, a certain job will have a \$3 rate of pay for a 100% efficiency performance. Should the employee perform at an efficiency rate of 125% for one hour, his pay for that hour's work would be calculated at \$3.75. On the other hand, should the efficiency performance be 75%, the employee's rate of pay that hour would be calculated at \$2.25.

The Employer's question in this regard is whether he must pay the minimum wage for each hour worked if the efficiency rate falls to a level which would result in paying less than the minimum wage for that specific hour. For example, if the worker's efficiency for a certain hour is determined to be 20% under the proposed plan, would the Employer be allowed to pay that employee 60 cents for that hour? Naturally, the Employer expects and intends to pay any employee whose efficiency rate during the entire 40 hour week would cause him to be paid less than the minimum wage, an amount equal to that required under the Fair Labor Standards Act minimum wage provisions.

In nonovertime workweeks an employee who is subject to the minimum wage requirements of the Act is considered paid in compliance if his overall earnings for the workweek equal or exceed the amount due at the applicable minimum wage. This is true regardless of whether the employee is paid on the basis of a single hourly rate, different hourly rates, piece rates, commissions, certain bonuses or some combination of these methods. In other words, if the employee's total earnings for the workweek divided by his compensable hours equal or exceeds the applicable minimum wage, he has been paid in compliance with the minimum wage standard. These principles apply to the proposed "efficiency pay rate" system and under such system there would be compliance with the minimum wage standard so long as the employee's regular rate of pay equals or exceeds the minimum wage of \$2.10 for workweeks of 40 hours or less.

The principles discussed in 29 CFR 778.115 apply where an employee compensated under the "efficiency pay rate" system at two or more hourly rates of pay works more than 40 hours per week. You will note that the employee's rates of pay may not be less than the applicable statutory minimum wage. Before an employee can be said to be paid overtime compensation due under section 7 of the Act, he must be paid his straight time compensation for all hours worked at the agreed rate but not less than the minimum wage.

Sincerely,

Warren D. Landis  
Acting Administrator  
Wage and Hour Division