

FLSA-871

September 8, 1978

This is in reply to your letter dated August 11, 1978, asking if you may pay under the Fair Labor Standards Act, overtime compensation earned by an employee over a 3 1/2 month period at the end of such period. Your example shows that the employee would receive his or her straight-time hourly rate of pay for each overtime hour worked during this time period, plus a bonus. You state this bonus and straight time hourly pay rate would equal or exceed the total overtime compensation due under the Act.

The enclosed copy of 29 CFR Part 778 constitutes the official interpretation of the Department of Labor with respect to the meaning and application of the maximum hours and overtime pay requirements contained in Section 7 of the Act.

As explained in Section 778.106 overtime compensation earned in a particular workweek must generally be paid on the regular pay day for the period in which the workweek ends. A workweek as explained in Section 778.105 is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. However, when the correct amount of overtime compensation cannot be determined until sometime after the regular pay period, the requirements of the Act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. Therefore, it would not be legal to pay overtime compensation in the manner in which you wish to do so.

In addition, as explained in Section 778.211(c), commission bonuses, such as the one you refer to, must be included in the employee's regular rate of pay for purposes of overtime compensation. As explained in Section 778.209 when the amount of the bonus can be ascertained, it must be apportioned back over the workweeks of the period during which it may be said to have been earned. The employee must then receive an additional amount of compensation for each workweek that he or she worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of statutory overtime hours worked during the week. For example, if during the 3 1/2 months the employee worked 15 workweeks and during these weeks worked 600 straight-time hours and also worked 200 overtime hours, or a total of 800 hours, the \$500 bonus would be divided by all hours worked to obtain a proportional hourly share of 62.5 cents for each hour of work. One half this amount would then be due for each overtime hour of work, or one-half of 62.5 is 31.25 times 200 overtime hours equals \$62.50 which would then be due in addition to the \$500 bonus or a total of \$562.50.

Sincerely,

Xavier M. Vela
Administrator

Enclosure