

FLSA-932

October 14, 1981

This is in reply to your letter of August 27, 1981, in which you request an opinion as to whether a client may exclude certain premium payments from an employee's regular rate of pay for the purpose of computing overtime compensation pursuant to Section 7 of the Fair Labor Standards Act (FLSA).

Your client occasionally schedules nonexempt employees to work "double shifts" and "double back shifts". A "double shift" is defined as two consecutive eight-hour shifts, i.e., 16 consecutive hours, excluding meal periods. A "double-back shift" consists of two nonconsecutive eight-hour shifts that are separated by a period of less than 12 hours. For example, a double shift would exist if an employee were scheduled for the 16 consecutive hours (after subtracting two 30 minute meal periods) from 8:00 a.m. to 1:00 a.m. the next day. In contrast, a double-back shift would be represented by scheduling an employee to work 8:00 a.m. to 4:30 p.m. and from 10:00 p.m. the same day until 6:30 a.m. the next day. The employee receives a 30-minute duty-free meal period for each of the eight-hour shifts constituting the double shifts or the double-back shift. Thus, employees working a double shift or a double-back shift work 16 hours during the schedule.

Your client pays employees working a double shift or a double-back shift premium rates for the second eight-hour component of the 16-hour schedule because the hours are in excess of eight hours in a 24-hour period. The premium paid for these hours is at the rate of time and one-half the employee's straight-time earnings for the 9th through 12th hours in the 24-hour period and double the employee's straight-time pay for the 13th through 16th hours in such period.

It is our opinion that, pursuant to Section 7(e)(5) of the Act, the extra compensation provided by the premiums paid for hours worked on double shifts and double-back shifts need not be included in an employee's regular rate of pay for the purpose of computing overtime compensation due under Section 7(a) of the FLSA. Moreover, under Section 7(b), this extra compensation may be credited toward the overtime payment required by the Act.

A "workday" under the FLSA is considered to be a period of 24 consecutive hours beginning when an employee starts work and ending 24 hours later. It need not agree with the normally accepted definition of a "day," i.e., beginning at midnight and ending 24 hours later, nor with the definition of a "workday" under State law.

We trust the above is responsive to your inquiry.

Sincerely,

William M. Otter
Administrator

Enclosure