

FLSA-886

October 8, 1982

Thank you for your letter of September 9, 1982, regarding the application of the Fair Labor Standards Act to the overtime pay practice of one of your clients.

Your client has a collective-bargaining agreement with his/her employees. The contract provides for straight-time pay (\$10.00 an hour) for work performed between 8:00 a.m. and 4:30 p.m., with one-half hour for lunch. One and one-half times the straight-time rate is paid for hours worked outside 8:00 a.m. to 4:30 p.m. and for work performed on Saturday. Your client charges customers one-half hour travel time each call and allows an employee the one-half hour regardless of actual travel time, employees often receive more than 8 hours of pay for 8 hours of work. You ask whether the contractual overtime rate when paid to employees, would satisfy the overtime compensation requirements of the Act.

As explained in sections 778.108 and 778.109 of 29 CFR Part 778, copy enclosed, the Act requires that overtime compensation be computed at not less the one and one-half time the employee's regular rate of pay. The regular rate of pay is determined by dividing the employee's total remuneration for employment in any workweek (excluding the seven specified types of payments listed in section 7(e) of the Act) by the total number of hours actually worked in that workweek for which such compensation was paid. Since your client's method of overtime compensation computation is not so computed, it would not meet the requirements of the Act.

However, as explained in sections 778.201 and 778.206, section 7(e)(7) of the Act provides, in part, that extra compensation provided by a premium rate paid "in pursuance of an applicable employment contract or collective-bargaining agreement for work outside of hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding 8 hours) or workweek (not exceeding 40 hours)" may be excluded from the employee's regular rate and credited toward overtime pay due him/her under the Act, provided such premium rate is "not less than one and one-half times the rates established in good faith by the contract or agreement for like work performed during such workday or workweek."

In addition, as explained in section 778.203, 778.205 and 778.206, section 7(e) (6) of the Act provides that extra compensation provided by a premium rate of at least time and one-half paid under an employment agreement for work performed on Saturdays and Sundays may be excluded from the employee's regular rate and credited toward overtime pay due the employee.

Therefore, in the example you enclosed with your letter the overtime pay due the employee would be computed as follows: 44 hours (hours paid for) times \$10 (the straight-time pay) equals \$440 (total straight-time wages); \$440 divided by 42 hours (actual hours of work) equals \$10.475 (the regular rate); \$10.475 times one-half (overtime premium) times 2 hours (overtime hours of work) equals \$10.475 (overtime premium pay due). However, since \$10.00 of overtime premium pay for 2 hours of work on Saturday has already been paid, such amount would be subtracted from the required amount of overtime compensation i.e., \$10.475 minus \$10.00 equal \$.475 the additional overtime premium pay due.

With regard to your last question, it would not matter if the money were separately paid as travel time to the employees since it is remuneration for employment and as such must be included in the

regular rate computation.

We trust the above is responsive to your inquiry.

Sincerely,

William M. Otter
Administrator

Enclosure