

FLSA-967

December 6, 1982

This is in reply to your letter of June 22, 1982, a copy of which was forwarded to us on November 5, 1982, by ***. The original must have gone astray in the mails.

You request an opinion as to whether bonus payments under proposed "Gainsharing Incentive Plans" are in compliance with the Fair Labor Standards Act (FLSA). "Gainsharing" is a generic term for group incentive plans designed to provide the employees at a facility with a share in the net savings from productivity increases. Bonuses under such plans will be distributed in terms of "cents per hour" (bonus wages rate) and will be based on actual hours worked. The payment will be adjusted for overtime hours worked according to the "boosted hours" method (each overtime hour counted as one and one-half hours). Your letter describes the plan's provisions in detail and we see no need to repeat them here.

The FLSA provides that all remuneration for employment paid to an employee, with the exception of the payments specified in Section 7(e), must be included in the regular rate of pay on which overtime compensation is computed. Bonus payments which are promised to employees as an incentive for increased or sustained productive effort are not amounts the types of payments which may be excluded from the regular rate. The method of including such payments in the regular rate is explained in Sections 778.208 through 778.210 of the enclosed Interpretative Bulletin on Overtime Compensation. You will note in Section 778.210 that a plan for the payment of a bonus may also provide for the simultaneous payment of overtime compensation due on the bonus. The distribution of a bonus as a predetermined percentage of "boosted hours" automatically includes the overtime due under the Act and no additional computation or payment of overtime is required.

It is our opinion that the method by which your company distributes the "Gainsharing" bonuses to its employees complies with the overtime pay provisions of the FLSA. This is so because the bonus allocation itself, as a mathematical fact, includes both straight time and overtime compensation.

We trust the above is responsive to your inquiry.

Sincerely,

William M. Otter
Administrator

Enclosure