

## FLSA-866

January 14, 1983

Thank you for your letter of October 4, 1982, asking on behalf of one of your clients several questions regarding the calculation of overtime compensation under the Fair Labor Standards Act.

You state the employees of your client currently work an 8-hour shift. They are paid a salary for a 40-hour workweek. The salary is reduced by the hourly rate (\$10.00) for each hour not worked in a short workweek. Employees are paid one and one-half times their hourly rate for all hours worked over 40 in a workweek. The workweek starts on Monday and ends on Sunday. The payroll period is semi-monthly. Your client is considering a change to a 12-hour 6 week repeating schedule of 10 workdays "on" followed by 4 days "off", but needs to continue using the semi-monthly pay period.

Since you ask several questions about the computation of overtime pay for employees who would be employed under the new schedule, we will respond to them in the order presented. Our responses presume that none of the Federal Government contract laws which require daily overtime compensation are applicable to your client's employees.

You first ask "What is the method for calculating overtime for employees on 12-hour workshift schedules who are paid semi-monthly?"

As explained in Section 778.103 of 29 CFR Part 778, copy enclosed, if an employee is covered by the Act and is not exempt from its overtime pay requirements, the employer must total all hours worked by the employee and pay overtime compensation for each hour worked in excess of 40 hours in a workweek. When pay periods are other than weekly or bi-weekly, it is possible that a pay period will end in the middle of a workweek. In such cases, as explained in section 778.106, overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends.

Your second and third questions ask whether there is a method by which a constant salary may be paid for pre-scheduled hours of work, which include overtime hours of work.

Where the wages due an employee are properly computed on a workweek basis, an employer may pay the determinable portion of such wages in semi-monthly installments without destroying the validity of the regular rate of pay or violating the overtime pay provisions of the Act. However, where an employee worked more than, or less than, the number of hours which was used to compute the semi-monthly wage installment, appropriate additions to, or deductions from such semi-monthly wage installment, appropriate additions to, or deductions from such semi-monthly amount would have to be made on the regular pay day for the pay period in which such workweek ended. In the case of excused absences for which compensation is paid under the employment contract, no deductions would be required for non-overtime weeks, and only overtime pay deductions would be required in overtime weeks.

For example, where there are alternating workweek schedules of 43 hours and 36 hours, the semi-monthly wage installment amount would be computed as follows:

hourly rate = \$10

### 36-hour workweeks

36 hours X \$10 an hour = \$360 per week

x 26 weeks = \$9,360

48-hour workweeks

48 hours X \$10 an hour = \$480 per week

+ 8 hours X \$10 x 1/2 (overtime premium) = \$40

total weekly pay = \$520

x 26 weeks = \$13,520

yearly pay = \$22,880

\$22,880 per year ÷ 24 (semi-monthly pay periods) = \$953.33

If, during a pay period, an employee worked 40 hours during a workweek instead of the scheduled 36 hours, he/she would be \$993.33 (\$953.33 + 4 hours x \$10) at the net semi-monthly pay day. Alternatively, if, during a pay period, an employee worked 44 hours during a workweek instead of 48 hours, he/she would be due \$893.33 (\$953.33 - 4 hours x \$10 x 1 1/2) at the next semi-monthly pay day.

Under your client's proposed schedule, an employee would work a 6-week rotating schedule composed of 4 workweeks of 36 hours and 2 workweeks of 48 hours. Such a schedule is not easily converted to a semi-monthly wage installment, since the schedule would not average out over a year. However, inasmuch as a three-year average and a 3-workshift average result in the same semi-monthly wage installment amount, we will illustrate the latter.

The following workweek compositions would occur for the three shifts which you described over the period of one year.

A: first shift = 36 weeks of 36 hours and 16 weeks of 48 hours

B: second shift = 34 weeks of 36 hours and 18 weeks of 48 hours

C: third shift = 36 weeks of 36 hours and 16 weeks of 48 hours

Using the weekly salary amounts from the alternating workweek schedules illustrated above, the following annual earning computations would result:

A: first shift = 36 weeks x \$360 + 16 weeks x \$520 = \$21,280

B: second shift = 34 weeks x \$360 + 18 weeks x \$520 = \$21,600

C: third shift = 36 weeks x \$360 + 16 weeks x \$520 = \$21,280

tri-shift annual earnings \$64,160

\$64,160 ÷ 3 shifts = \$21,386.67, the average yearly pay.

\$21,386.67 / 24 (semi-monthly pay periods) \$891.11

Your fourth question asks whether there would be any advantage to using a bi-weekly pay period rather than a semi-monthly pay period.

One of the primary disadvantages encountered by employers using a semi-monthly pay period is that employees often look at the number of hours of work for which they were paid and assume they were not properly paid. For example, during a semi-monthly pay period an employee could work 48 or 96 hours and not be due any overtime compensation. This is so because the semi-monthly pay period encompasses more than two workweeks. Assuming an employee did not work more than 40 hours in any one workweek, overtime premium pay would not be required. However, the employee may feel that because he or she worked more than 80 hours in the pay period he or she should be paid overtime compensation.

In addition to the possible misunderstanding by employees with regard to the proper computation of overtime compensation, there would be additional recordkeeping responsibilities for the employer. That is time worked during a prior pay period would have to be reviewed when preparing the payroll to determine whether the semi-monthly allocation needs adjustment to reflect additional or fewer hours of work than those scheduled hours used to calculate the semi-monthly allocation amount.

We trust the above is responsive to your inquiry. However, if you have further questions, please do not hesitate to contact us.

Sincerely,

William M. Otter  
Administrator

Enclosure