

FLSA-1377

January 22, 1990

This is in response to your letter concerning the application of the overtime compensation provisions of the Fair Labor Standards Act (FLSA) to certain employees of your client who are paid under an incentive compensation system.

You state that your client is an apparel manufacturer and that cutting room employees are covered by a collective bargaining agreement (CBA). Your client and the union have reached an agreement that all cutting room employees will be required to work and be paid under an incentive compensation system instead of on an hourly basis. Under the agreement, the total compensation payable to this group of employees will be based upon the number of units produced by the group for a predetermined price per unit produced. In other words, the parties have established a group piece work system under the CBA for the cutting room employees.

The total compensation (total number of pieces produced X price per piece) for the group's production will be allocated among the cutting room employees so that each employee will receive a pro-rata share of the group's total output. The parties have devised a formula to determine each employee's pro-rata share of the group's total piecework production, which is intended to provide for the simultaneous payment of straight-time and overtime compensation due each individual employee in the group. In computing each individual employee's share, the individual's total hours worked in the workweek (straight-time and overtime) and the employee's hourly "craft differential" are aggregated and applied to the group's aggregate "hourly" earnings; the resulting percentages are then applied to the group's total piecework production earnings to determine the individual employee's pro-rata share of the total earnings. You believe that this formula complies with the overtime compensation requirements of FLSA. We disagree.

While the formula purportedly provides that each individual employee receives overtime premium compensation simultaneously in addition to straight-time compensation, no additional premium compensation will have actually been paid by your client over and above the total piecework earnings for the group. Although each employee's contribution to total production has been allocated, the total compensation to be paid by your client after the formula has been applied is the same as if the formula had not been applied. In other words, the production of 4000 units by 6 employees which required the employees to work (in the aggregate) 43 statutory overtime hours has not cost your client any additional premium pay for the units produced by the employees cited in your example.

It is our opinion that each employee's total weekly compensation shown in your example (revised) represents each employee's straight-time share of the group's total production upon which extra half-time compensation is still due. Additional half-time compensation due each individual employee may be computed by multiplying the employee's total weekly compensation by the appropriate overtime coefficient specified in the enclosed Coefficient Table, which has been developed for computing overtime on piecework and certain other forms of employee compensation.

We trust that the above discussion is responsive to your inquiry.

Sincerely,

Nancy M. Flynn
Acting Administrator

Enclosure