

## FLSA-469

June 9, 1992

This is in response to your letter concerning the payment of overtime premium pay under the Fair Labor Standards Act (FLSA) to nonexempt employees employed by a commercial bank. You request a written opinion as to whether certain situations related to the payment of overtime is in compliance with the FLSA.

The Wage and Hour Division of the Department of Labor administers and enforces the FLSA, the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid a minimum wage of \$4.25 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

In the first scenario you present, an employee works 37 1/2 hours in a workweek in a full time nonexempt capacity. In addition, this employee works in the same workweek an extra 9 hours in an unrelated capacity as an evening switchboard operator. The employee works a total of 46 1/2 hours and is compensated separately for each job function. The employee is given a set salary of \$400 per week for the work performed in the full time position regardless of the number of hours worked as long as the total hours worked in this capacity do not exceed 40 hours. In addition, the employee is paid a predetermined fixed amount of \$20 for each 3 hour switchboard shift worked. You state that the hours worked in the employee's full time position are not combined with the hours worked as a switchboard operator for the purpose of calculating overtime compensation.

When an employee in a single workweek works at two or more different types of work for which different non-overtime rates of pay (of not less than the applicable minimum wage) have been established, the employee's regular rate for that week is the weighted average of such rates. The regular rate of pay of an employee on which overtime pay is computed is determined by dividing the total remuneration for employment (except the statutory exclusions) in any workweek by the total number of hours worked at all jobs by the employee in that workweek. Since straight time compensation has already been paid, the employee must receive additional overtime pay for each overtime hour worked in the week at not less than one-half the regular rate of pay.

In addition, section 7(g)(2) of the FLSA allows, under specified conditions, the computation of overtime pay based on one and one-half times the hourly rate in effect when the overtime work is performed. The requirements for computing overtime pay pursuant to section 7(g)(2) are prescribed in 29 CFR 778.415 through 778.421 (copy enclosed).

In the second scenario you present, a nonexempt employee receives a fixed salary of \$400 per week for work as a full time office worker. In addition, the employee works on-call as an automated teller machine (ATM) repair technician every third week, Monday through Sunday. The ATM duties are only performed during hours other than those when the employee performs office worker duties. The employee receives a flat rate of \$200 per week for those hours during which he/she is on call regardless of the number of hours spent actually servicing ATMs. During this given workweek, you state that the employee spends 15 hours servicing the ATMs and no extra compensation is received for actually working on the ATMs.

When an employee who is on-call is not confined to his or her home or any particular place, but is required only to leave work where he or she may be reached, the hours spent on-call are not regarded as working time. However, any payment for the on-call time, while not attributable to any particular hours of work, is paid for performing a duty connected with the job and must be included in the employee's regular rate. For example, the employee is paid \$400 a week for 40 hours of work and is paid \$200 for being on-call every third week. Since the employee is called back for 15 hours of work during the workweek, the employee's

regular rate would be computed as follows: the employee's total straight time pay is \$400 plus \$200 on-call pay (15 hours worked). Dividing the employee's total earnings of \$600 by 55 hours of work yields a regular rate of \$10.91 for the employee. One-half the regular rate times 15 overtime hours equals \$81.83 of overtime pay due the employee, making the total pay due the employee \$681.83 for the week.

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

Sincerely,

Daniel F. Sweeney  
Deputy Assistant Administrator