

MAY - 1 2001

OPINION LETTER

Dear

This is in response to your letter requesting an opinion as to a computation of overtime that you called "co-efficient overtime", which you stated was initiated under Section 7(g) of the Fair Labor Standards Act. You gave the following example of a computation of "co-efficient overtime" for computing weekly compensation:

Total hours worked for the week: 60;
Total pay for the week: \$1,000.00;
Calculated hourly rate: \$1,000 divided by 70 = \$14.285
Overtime calculated hourly rate: \$14.285 divided by .50 = \$7.14
Total calculated pay for the week: 60 hours X \$14.285 = \$857.20
20 hours x \$7.14 = \$142.80
\$1,000.00

You provided the following description for the calculation by facsimile:

"The piece worker's regular (hourly) rate is computed by adding together the total earnings for the workweek from piece rates and all other sources of pay for time worked (such as "waiting time" or time spent in employer-mandated training or meetings). The total sum of all earnings is divided by the number of hours worked in the week for which such compensation was paid to yield the employee's "regular rate" for that week. He is to be paid the regular rate for all hours worked in the workweek.

For his overtime work, the piece worker is entitled to be paid a sum equivalent to one half his regular rate of pay multiplied by the number of hours worked in excess of 40 in the week. Only half time pay is required for hours worked over 40 because he has already received straight time compensation at piece rates or by supplementary payments for all hours worked. This is "co-efficient overtime".

There is no system of "co-efficient overtime" under the FLSA as you have described and there is no information to indicate that the calculation corresponds to Section 7(g) of the FLSA. Your calculation shows total hours worked for the week to be 60 hours, but the

regular rate of pay is incorrectly computed by dividing the total earnings for the workweek by 70 hours.

Your description of "co-efficient overtime" is similar to the calculation of the regular-rate and overtime for a piece worker. The regular rate for a piece worker is computed by adding together the total earnings for the workweek from piece rates and all other earnings and any sums paid for waiting time or other hours worked. This sum is then divided by the number of hours worked in a week to yield the regular rate. For the overtime work the piece worker is entitled to be paid, in addition to the total straight-time weekly earnings, one-half this regular rate for each hour over 40 in the workweek. Since the employee has already received straight-time compensation for all hours worked, only additional half-time pay is required. See 29 C.F. R. 778.111(a). Thus, if the employee has worked 60 hours and has earned \$1,000.00 for all hours worked, the regular rate is \$16.667 (\$1,000.00 divided by 60 hours). For the 20 hours of overtime the employee is entitled to additional compensation of \$166.68 (20 hours at \$8.334). For the week's work the employee is entitled to a total of \$1,166.68.

It is our opinion that the calculation you have presented does not comply with the law.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

We trust that this is responsive to your inquiry.

Sincerely,

Thomas M. Markey
Acting Administrator