

Wage and Hour Division, Labor

§ 531.37

PAYMENT WHERE ADDITIONS OR DEDUCTIONS ARE INVOLVED

§ 531.36 Nonovertime workweeks.

(a) When no overtime is worked by the employees, section 3(m) and this part apply only to the applicable minimum wage for all hours worked. To illustrate, where an employee works 40 hours a week at a cash wage rate of \$1.60 an hour in a situation when that rate is the applicable minimum wage and is paid \$64 in cash free and clear at the end of the workweek, and in addition is furnished facilities valued at \$4, no consideration need be given to the question of whether such facilities meet the requirements of section 3(m) and this part, since the employee has received in cash the applicable minimum wage of \$1.60 an hour for all hours worked. Similarly, where an employee is employed at a rate of \$1.80 an hour and during a particular workweek works 40 hours for which he is paid \$64 in cash, the employer having deducted \$8 from his wages for facilities furnished, whether such deduction meets the requirement of section 3(m) and subpart B of this part need not be considered, since the employee is still receiving, after the deduction has been made, a cash wage of \$1.60 an hour. Deductions for board, lodging, or other facilities may be made in nonovertime workweeks even if they reduce the cash wage below the minimum, provided the prices charged do not exceed the "reasonable cost" of such facilities. When such items are furnished the employee at a profit, the deductions from wages in weeks in which no overtime is worked are considered to be illegal only to the extent that the profit reduces the wage (which includes the "reasonable cost" of the facilities) below the required minimum. Accordingly, in a situation when \$1.60 an hour is the applicable minimum wage, if an employee employed at a rate of \$1.65 an hour works 40 hours in a workweek and is paid only \$54 in cash, \$12 having been deducted for facilities furnished to him, such facilities must be measured by the requirements of section 3(m) and this part to determine if the employee has received the minimum of \$64 (40 hours × \$1.60) in cash or in facilities which may be legitimately included in

"wages" payable under the Act. The same would be true where an employee is furnished the facilities in addition to a cash wage of \$54 for 40 hours of work. In either case, if the "reasonable cost" to the employer of legitimate facilities equals at least \$10 the requirements of the Act are met. Cf. *Southern Pacific Co. v. Joint Council Dining Car Employees*, 165 F. (2d) 26 (C.A. 9).

(b) Deductions for articles such as tools, miners' lamps, dynamite caps, and other items which do not constitute "board, lodging, or other facilities" may likewise be made in nonovertime workweeks if the employee nevertheless received the required minimum wage in cash free and clear; but to the extent that they reduce the wages of the employee in any such workweek below the minimum required by the Act, they are illegal.

§ 531.37 Overtime workweeks.

(a) Section 7 requires that the employee receive compensation for overtime hours at "a rate of not less than one and one-half times the regular rate at which he is employed." When overtime is worked by an employee who receives the whole or part of his wage in facilities and it becomes necessary to determine the portion of his wages represented by facilities, all such facilities must be measured by the requirements of section 3(m) and subpart B of this part. It is the Administrator's opinion that deductions may be made, however, on the same basis in an overtime workweek as in nonovertime workweeks (see § 531.36), if their purpose and effect are not to evade the overtime requirements of the Act or other law, providing the amount deducted does not exceed the amount which could be deducted if the employee had only worked the maximum number of straight-time hours during the workweek. For example, in a situation where \$1.60 an hour is the applicable minimum wage, if an employee is employed at a rate of \$1.65 an hour (5 cents in excess of the minimum wage) the maximum amount which may be deducted from his wages in a 40-hour workweek for items such as tools, dynamite caps, miners' lamps, or other articles which are not "facilities" within the meaning of the Act, is 40 times

§ 531.38

5 cents or \$2 (see § 531.36). Deductions in excess of this amount for such articles are illegal in overtime workweeks as well as in nonovertime workweeks. There is no limit on the amount which may be deducted for “board, lodging, or other facilities” in overtime workweeks (as in workweeks when no overtime is worked), provided that these deductions are made only for the “reasonable cost” of the items furnished. When such items are furnished at a profit, the amount of the profit (plus the full amount of any deductions for articles which are not facilities) may not exceed \$2 in the example heretofore used in this paragraph. These principles assume a situation where bona fide deductions are made for particular items in accordance with the agreement or understanding of the parties. If the situation is solely one of refusal or failure to pay the full amount of wages required by section 7, these principles have no application. Deductions made only in overtime workweeks, or increases in the prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade the overtime requirements of the Act.

(b) Where deductions are made from the stipulated wage of an employee, the regular rate of pay is arrived at on the basis of the stipulated wage before any deductions have been made. Where board, lodging, or other facilities are customarily furnished as addition to a cash wage, the reasonable cost of the facilities to the employer must be considered as part of the employee's regular rate of pay. See *Walling v. Alaska Pacific Consolidated Mining Co.*, 152 F. (2d) 812 (C.A. 9), cert. denied, 327 U.S. 803. Thus, suppose an employee employed at a cash rate of \$2 an hour, whose maximum nonovertime workweek under section 7(a) of the Act is 40 hours, works 44 hours during a particular workweek. If, in addition, he is furnished board, lodging, or other facilities valued at \$16, but whose “reasonable cost” is \$11, the \$11 must be added to his cash straight-time pay of \$88 ($\2×44 hours) in determining the regular rate of pay on which his overtime compensation is to be calculated. The regular rate then becomes \$2.25 an

29 CFR Ch. V (7-1-04 Edition)

hour ($(\$88 + \$11) \div (44 \text{ hours}) = \2.25 an hour). The employee is thus entitled to receive a total of \$103.50 for the week ($(40 \text{ hours} \times \$2.25 = \$90) + (4 \text{ hours} \times \$3.37 \frac{1}{2} = \$13.50)$). In addition to the straight-time pay of \$88 in cash and \$11 in facilities, extra compensation of \$4.50 in cash for the 4 overtime hours must, therefore, be paid by the employer, to meet the requirements of the Act.

PAYMENTS MADE TO PERSONS OTHER THAN EMPLOYEES

§ 531.38 Amounts deducted for taxes.

Taxes which are assessed against the employee and which are collected by the employer and forwarded to the appropriate governmental agency may be included as “wages” although they do not technically constitute “board, lodging, or other facilities” within the meaning of section 3(m). This principle is applicable to the employee's share of social security and State unemployment insurance taxes, as well as other Federal, State, or local taxes, levies, and assessments. No deduction may be made for any tax or share of a tax which the law requires to be borne by the employer.

§ 531.39 Payments to third persons pursuant to court order.

(a) Where an employer is legally obliged, as by order of a court of competent and appropriate jurisdiction, to pay a sum for the benefit or credit of the employee to a creditor of the employee, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceeding, deduction from wages of the actual sum so paid is not prohibited: *Provided*, That neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction. In such case, payment to the third person for the benefit and credit of the employee will be considered equivalent, for the purposes of the Act, to payment to the employee.

(b) The amount of any individual's earnings withheld by means of any legal or equitable procedure for the payment of any debt may not exceed the restriction imposed by section