

(c) *Minimum wage.* The employee's average hourly earnings for the workweek (exclusive of overtime pay and other pay which may be excluded from the regular rate)⁶ and the established basic rate used to compute overtime pay may not be less than the legal minimum.⁷

[20 FR 5680, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956]

AUTHORIZED BASIC RATES

§ 548.300 Introductory statement.

Section 548.3 contains a description of a number of basic rates any one of which, when established by agreement or understanding, is authorized for use without prior specific approval of the Administrator. These basic rates have been found in use in industry and the Administrator has determined that they are substantially equivalent to the straight-time average hourly earnings of the employee over a representative period of time. The authorized basic rates are described below.

[20 FR 5681, Aug. 6, 1955]

§ 548.301 Salaried employees.

(a) Section 548.3(a) authorizes as an established basic rate: "A rate per hour which is obtained by dividing a monthly or semi-monthly salary by the number of regular working days in each monthly or semi-monthly period and then by the number of hours in the normal or regular workday. Such a rate may be used to compute overtime compensation for all the overtime hours worked by the employee during the monthly or semi-monthly period for which the salary is paid."

(b) Section 548.3(a) may be applied to salaried employees paid on a monthly or semi-monthly basis. Under section 7(a) of the Act the method of computing the regular rate of pay for an employee who is paid on a monthly or semi-monthly salary basis is to reduce the salary to its weekly equivalent by multiplying the monthly salary by 12

(the number of months) or the semi-monthly salary by 24, and dividing by 52 (the number of weeks). The weekly equivalent is then divided by the number of hours in the week which the salary is intended to compensate.⁸ Section 548.3(a) is designed to provide an alternative method of computing the rate for overtime purposes in the case of an employee who is compensated on a monthly or semi-monthly salary basis, where this method is found more desirable. This method is applicable only where the salary is paid for a specified number of days per week and a specified number of hours per day normally or regularly worked by the employee. It permits the employer to take into account the variations in the number of regular working days in each pay period. The basic rate authorized by § 548.3(a) is obtained by dividing the monthly or semi-monthly salary by the number of regular working days in the month or half-month, and then by the number of hours of the normal or regular work day.

Example. An employee is compensated at a semi-monthly salary of \$154 for a workweek of 5 days of 8 hours each, Monday through Friday. If a particular half-month begins on Tuesday and ends on the second Tuesday following, there are 11 working days in that half-month. The employee's basic rate would then be computed by dividing the \$154 salary by 11 working days of 8 hours each, or 88 hours. The basic rate in this situation would therefore be \$1.75 an hour. The basic rate would remain the same regardless of the fact that the employee did not actually work 11 days of 8 hours each because of the occurrence of a holiday, or because the employee took a day off, or because he worked longer than 8 hours on some days during the period, or because he worked fewer than 8 hours on some days, or because he worked more than 11 days. In any of these circumstances the employee's basic rate would still be \$1.75 an hour. If in the next semimonthly period there are 10 working days the rate would be computed by dividing the salary of \$154 by 80 working hours, or 10 days of 8 hours each. The basic rate would therefore be \$1.925 an hour. The rate would remain \$1.925 an hour even though the employee did not in fact work ten 8-hour days during the period for the reasons indicated above, or for any other reason.

(c) The overtime compensation for each workweek should be computed at

⁶See §§ 778.200 through 778.225 of this chapter for further discussion of what payments may be excluded.

⁷The legal minimum is the highest rate required by the Fair Labor Standards Act or other Federal, State or local law.

⁸See § 778.113 of this chapter.