

§ 778.109

“statutory exclusions.”) As stated by the Supreme Court in the Youngerman-Reynolds case cited above: “Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary ‘regular rate’ in the wage contracts.”

§ 778.109 The regular rate is an hourly rate.

The “regular rate” under the Act is a rate per hour. The Act does not require employers to compensate employees on an hourly rate basis; their earnings may be determined on a piece-rate, salary, commission, or other basis, but in such case the overtime compensation due to employees must be computed on the basis of the hourly rate derived therefrom and, therefore, it is necessary to compute the regular hourly rate of such employees during each workweek, with certain statutory exceptions discussed in §§ 778.400 through 778.421. The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid. The following sections give some examples of the proper method of determining the regular rate of pay in particular instances: (The maximum hours standard used in these examples is 40 hours in a workweek).

§ 778.110 Hourly rate employee.

(a) *Earnings at hourly rate exclusively.* If the employee is employed solely on the basis of a single hourly rate, the hourly rate is his “regular rate.” For his overtime work he must be paid, in addition to his straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus a \$6 hourly rate will bring, for an employee who works 46 hours, a total weekly wage of \$294 (46 hours at \$6 plus 6 at \$3). In other words, the employee is entitled to be paid an amount equal to \$6 an hour for 40 hours and \$9 an hour for the 6 hours of overtime, or a total of \$294.

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(b) *Hourly rate and bonus.* If the employee receives, in addition to his earnings at the hourly rate, a production bonus of \$9.20, the regular hourly rate of pay is \$6.20 an hour (46 hours at \$6 yields \$276; the addition of the \$9.20 bonus makes a total of \$285.20; this total divided by 46 hours yields a rate of \$6.20). The employee is then entitled to be paid a total wage of \$303.80 for 46 hours (46 hours at \$6.20 plus 6 hours at \$3.10, or 40 hours at \$6.20 plus 6 hours at \$9.30).

[46 FR 7309, Jan. 23, 1981]

§ 778.111 Pieceworker.

(a) *Piece rates and supplements generally.* When an employee is employed on a piece-rate basis, his regular hourly rate of pay is computed by adding together his total earnings for the workweek from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions): This sum is then divided by the number of hours worked in the week for which such compensation was paid, to yield the pieceworker’s “regular rate” for that week. For his overtime work the pieceworker is entitled to be paid, in addition to his total weekly earnings at this regular rate for all hours worked, a sum equivalent to one-half this regular rate of pay multiplied by the number of hours worked in excess of 40 in the week. (For an alternative method of complying with the overtime requirements of the Act as far as pieceworkers are concerned, see § 778.418.) Only additional half-time pay is required in such cases where the employee has already received straight-time compensation at piece rates or by supplementary payments for all hours worked. Thus, if the employee has worked 50 hours and has earned \$245.50 at piece rates for 46 hours of productive work and in addition has been compensated at \$5.00 an hour for 4 hours of waiting time, his total compensation, \$265.50 must be divided by his total hours of work, 50, to arrive at his regular hourly rate of pay—\$5.31. For the 10 hours of overtime the employee is entitled to additional compensation of \$26.55 (10 hours at \$2.655). For the week’s work he is thus entitled to a total of \$292.05 (which is