

§ 548.303

29 CFR Ch. V (7-1-05 Edition)

find it convenient to compute overtime on the basis of the average hourly earnings for the bi-weekly or semi-monthly period.¹⁰

Example 2. An employee, who normally would come within the forty hour provision of section 7(a) of the Act, is paid a fixed amount of money for the completion of each job. Each job takes 2 or 3 days to complete. Under the employment agreement, the employee is entitled to time and one-half an authorized basic rate for all hours worked in excess of forty in the workweek. The authorized basic rate is the employee's average hourly earnings for each job. Suppose he completes two jobs in a particular workweek and all his overtime hours are on job No. 2. The employee's average hourly earnings on job No. 2 may be used to compute his overtime pay.

(2) In this connection it should be noted that although the basic rate is obtained by averaging earnings over a period other than a workweek the number of overtime hours under the act must be determined on a workweek basis.

(c) In computing the basic rate under § 548.3(b), the employer may exclude from the computation the payments which he could exclude in computing the "regular" rate of pay.¹¹

[20 FR 5681, Aug. 6, 1955, as amended at 26 FR 7731, Aug. 18, 1961]

§ 548.303 Average earnings for each type of work.

(a) Section 548.3(c) authorizes as an established basic rate: "A rate per hour which is obtained by averaging the earnings, exclusive of payments described in paragraphs (1) through (7) of section 7(e) of the act, of the employee for each type of work performed during each workweek, or any other longer period not exceeding sixteen calendar days, for which such average is regularly computed under the agreement or understanding. Such a rate may be used to compute overtime compensation, during the particular period for which such average is computed, for all the overtime hours worked by the employee at the type of work for which the rate is obtained."

¹⁰See § 548.301 (c) for a discussion of the method of computing overtime for an employee paid on a semi-monthly basis.

¹¹See §§ 778.200 through 778.225 of this chapter for an explanation of what payments may be excluded.

(b) Section 548.3(c) differs from § 548.3(b) in this way: Section 548.3(b) provides for the computation of the basic rate on the average of all earnings during the specified period; § 548.3(c) permits the basic rate to be computed on the basis of the earnings for each particular type of work. Thus, if the employee performs different types of work, each involving a different rate of pay such as different piece-rate, job rates, or a combination of these with hourly rates, a separate basic rate may be computed for each type of work and overtime computed on the basis of the rate or rates applicable to the type of work performed during the overtime hours.

Example. An employee who is paid on a weekly basis with overtime after 40 hours works six 8-hour days in a workweek under an agreement or understanding reached pursuant to this subsection. He performs three different types of piecework, each at a different rate of pay. The basic rates to be used for computing overtime in this situation would be arrived at by dividing the earnings for each type of work by the number of hours during which that type of work was performed. There would thus be three different basic rates, one for each type of work. Since the overtime hours used in this illustration occur on the sixth day, the types of work performed on the sixth day would determine the basic rate or rates on which overtime would be computed that week. Thus, if the average hourly earnings for the three types of work are respectively \$1.70 an hour in type A, \$1.80 an hour in type B, and \$2 an hour in type C, and on the sixth day the employee works on type B, his overtime premium for the sixth day would be one-half the basic rate of \$1.80 an hour, multiplied by the 8 hours worked on that day.

(Sec. 1, 52 Stat. 1060, as amended, 29 U.S.C. 201, *et seq.*)

[20 FR 5681, Aug. 6, 1955, as amended at 32 FR 3293, Feb. 25, 1967]

§ 548.304 Excluding value of lunches furnished.

(a) Section 548.3(d) authorizes as established basic rates:

The rate or rates which may be used under the Act to compute overtime compensation of the employee but excluding the cost of meals where the employer customarily furnishes not more than a single meal per day.

(b) It is the purpose of § 548.3(d) to permit the employer upon agreement with his employees to omit from the