

## Wage and Hour Division, Labor

## § 778.6

1263; Gen. Ord. 45A, May 24, 1950, 15 FR 3290).

### § 778.2 Coverage and exemptions not discussed.

This part 778 does not deal with the general coverage of the Act or various specific exemptions provided in the statute, under which certain employees within the general coverage of the wage and hours provisions are wholly or partially excluded from the protection of the Act's minimum-wage and overtime-pay requirements. Some of these exemptions are self-executing; others call for definitions or other action by the Administrator. Regulations and interpretations relating to general coverage and specific exemptions may be found in other parts of this chapter.

### § 778.3 Interpretations made, continued, and superseded by this part.

On and after publication of this part in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as part 778 of this chapter. Prior opinions, rulings and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, or to any Regional Office of the Division.

[46 FR 7309, Jan. 23, 1981]

### § 778.4 Reliance on interpretations.

The interpretations of the law contained in this part 778 are official interpretations which may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947 (61 Stat. 84).

### § 778.5 Relation to other laws generally.

Various Federal, State, and local laws require the payment of minimum hourly, daily or weekly wages different from the minimum set forth in the Fair Labor Standards Act, and the payment of overtime compensation computed on bases different from those set forth in the Fair Labor Standards Act. Where such legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, nothing in the act, the regulations or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws. Compliance with other applicable legislation does not excuse noncompliance with the Fair Labor Standards Act. Where a higher minimum wage than that set in the Fair Labor Standards Act is applicable to an employee by virtue of such other legislation, the regular rate of the employee, as the term is used in the Fair Labor Standards Act, cannot be lower than such applicable minimum, for the words "regular rate at which he is employed" as used in section 7 must be construed to mean the regular rate at which he is lawfully employed.

### § 778.6 Effect of Davis-Bacon Act.

Section 1 of the Davis-Bacon Act (46 Stat. 1494, as amended; 40 U.S.C. 276a) provides for the inclusion of certain fringe benefits in the prevailing wages that are predetermined by the Secretary of Labor, under that Act and related statutes, as minimum wages for laborers and mechanics employed by contractors and subcontractors performing construction activity on Federal and federally assisted projects. Laborers and mechanics performing work subject to such predetermined minimum wages may, if they work overtime, be subject to overtime compensation provisions of other laws which may apply concurrently to them, including the Fair Labor Standards Act. In view of this fact, specific provision was made in the Davis-Bacon Act for the treatment of such predetermined fringe benefits in the computation of overtime compensation under other applicable statutes including the Fair Labor Standards Act. The application

of this provision is discussed in § 5.32 of this title, which should be considered together with the interpretations in this part 778 in determining any overtime compensation payable under the Fair Labor Standards Act to such laborers and mechanics in any workweek when they are subject to fringe benefit wage determinations under the Davis-Bacon and related acts.

**§ 778.7 Effect of Service Contract Act of 1965.**

The McNamara-O'Hara Service Contract Act of 1965, which provides for the predetermination and the specification in service contracts entered into by the Federal Government or the District of Columbia, of the minimum wages and fringe benefits to be received by employees of contractors and subcontractors employed in work on such contracts, contains the following provision:

SEC. 6. In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of pay of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(e)\* thereof. (\*Subsection designation changed in text from section 7(d) to 7(e) to conform with the relettering enacted by the Fair Labor Standards Amendments of 1966.)

Where the fringe benefits specified in such a service contract are furnished to an employee, the above provision permits exclusion of such fringe benefits from the employee's regular rate of pay under the Fair Labor Standards Act pursuant to the rules and principles set forth in subpart C of this part 778. However, the McNamara-O'Hara Act permits an employer to discharge his obligation to provide the specified fringe benefits by furnishing any equivalent combinations of bona fide fringe benefits or by making equivalent or differential payments in cash. Permissible methods of doing this are set forth in part 4 of this title, subpart B. If the employer furnishes equivalent benefits or makes cash payments, or both, to an employee as therein authorized, the amounts thereof, to the extent that they operate to discharge the employer's obligation under the

McNamara-O'Hara Act to furnish such specified fringe benefits, may be excluded pursuant to such Act from the employee's regular or basic rate of pay in computing any overtime pay due the employee under the Fair Labor Standards Act, pursuant to the rule provided in § 4.55 of this title. This means that such equivalent fringe benefits or cash payments which are authorized under the McNamara-O'Hara Act to be provided in lieu of the fringe benefits specified in determinations issued under such Act are excludable from the regular rate in applying the overtime provisions of the Fair Labor Standards Act if the fringe benefits specified under the McNamara-O'Hara Act would be so excludable if actually furnished. This is true regardless of whether the equivalent benefits or payments themselves meet the requirements of section 7(e) of the Fair Labor Standards Act and subpart C of this part 778.

**Subpart B—The Overtime Pay Requirements**

INTRODUCTORY

**§ 778.100 The maximum-hours provisions.**

Section 7(a) of the Act deals with maximum hours and overtime compensation for employees who are within the general coverage of the Act and are not specifically exempt from its overtime pay requirements. It prescribes the maximum weekly hours of work permitted for the employment of such employees in any workweek without extra compensation for overtime, and a general overtime rate of pay not less than one and one-half times the employee's regular rate which the employee must receive for all hours worked in any workweek in excess of the applicable maximum hours. The employment by an employer of an employee in any work subject to the Act in any workweek brings these provisions into operation. The employer is prohibited from employing the employee in excess of the prescribed maximum hours in such workweek without paying him the required extra compensation for the overtime hours worked at a rate meeting the statutory requirement.