

## Wage and Hour Division, Labor

## § 783.50

in this portion of section 6(b)(2) is reflecting concepts that are well established in the law, and existing precedents (in such cases as *Armour & Co. v. Wantock*, 323 U.S. 126; *Skidmore v. Swift & Co.*, 323 U.S. 134; *Steiner v. Mitchell*, 350 U.S. 247; *Mitchell v. King Packing Co.*, 350 U.S. 260; *Tennessee Coal, Iron & R. Co. v. Muscoda Local N. 123*, 321 U.S. 590; and *General Electric Co. v. Porter*, 208 F. 2d 805, certiorari denied, 347 U.S. 951, 975) would be applicable in determining what time constitutes hours worked. See also the general discussion of hours worked in part 785 of this chapter.

### § 783.47 Off-duty periods.

Off-duty periods include not only such periods as shore leave but also generally those hours spent by a seaman on the vessel outside his watch or normal or regular working hours and his standby periods during which hours he is not required to perform and does not perform work of any kind but is free to utilize his time for his own purpose. The fact that during such off-duty periods the employee is subject to call in case of emergency situations affecting the safety and welfare of the vessel upon which he is employed, or of its passengers, crew, or cargo or for participation in life boat or fire drills will not render such off-duty periods, excluded by employment agreement applicable to the employee, "hours worked". Responding to such calls, however, as well as the performance of work in response thereto constitute compensable work time. For further and more detailed discussion on what generally are regarded as "hours worked" under the Act, see part 785 of this chapter.

#### APPLICATION OF THE EXEMPTIONS

### § 783.48 Factors determining application of exemptions.

The application of the exemptions provided by section 13(a)(14) and section 13(b)(6) of the Act is determined in accordance with their language and scope as explained in §§ 783.24, 783.25, and 783.27, with regard to the principles set forth in § 783.20 and the legislative history and judicial construction outlined in §§ 783.28 through 783.30. Whether

a particular employee is exempt depends on what he does, as explained in §§ 783.31 through 783.37. Whether he is exempt from the overtime pay provisions only or from minimum wages as well depends on whether his employment is or is not on an American vessel, which is determined as indicated in §§ 783.38 through 783.42. In addition, sections 13(a)(14) and 13(b)(6), like other exemptions in the Act, apply on a workweek basis as mentioned in § 783.43 and explained in §§ 783.49 and 783.50.

### § 783.49 Workweek unit in applying the exemptions.

The unit of time to be used in determining the application of the exemption provided by section 13(b)(6) or 13(a)(14) to an employee is the workweek. (See *Overnight Transportation Co. v. Missel*, 316 U.S. 572; *Sternberg Dredging Co. v. Walling*, 158 F. 2d 678.) This is the period used in determining whether a substantial amount of non-seaman's work has been performed so as to make the exemption inapplicable. See § 783.37. A workweek is a fixed and regularly recurring interval of 7 consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing of the workweek for the purpose of escaping the requirements of the Act is not permitted.

### § 783.50 Work exempt under another section of the Act.

Where an employee performs work during his workweek, some of which is exempt under one section of the Act, and the remainder of which is exempt under another section or sections of the Act, the exemptions may be combined. The employee's combination exemption is controlled in such case by that exemption which is narrower in scope. For example, if part of his work is exempt from both minimum wage and overtime compensation under one section of the Act, and the rest is exempt only from the overtime pay requirements under section 13(b)(6), the employee is exempt that week from the overtime pay provisions but not from the minimum wage requirements.