

equal to the employee's total overtime earnings computed on his average hourly earnings for each workweek in accordance with section 7(a) of the Act.²²

(b) The length of time constituting a representative period will depend on the factors that cause the employee's average hourly earnings to vary appreciably from week to week. For instance, if the variation in earnings of an employee paid on an incentive basis is due to the difference in availability of work in the slow and busy seasons the period used for comparison of overtime earnings would have to include both a slow and a busy season in order to be representative. Likewise, if a piece-worker's average hourly earnings vary appreciably from week to week because of differences in materials or styles worked on, the period used for purposes of comparison would have to include work on the different materials and styles in order to be representative.

[20 FR 5683, Aug. 6, 1955]

COMPUTATION OF OVERTIME PAY

§ 548.500 Methods of computation.

The methods of computing overtime pay on the basic rates for piece workers, hourly rated employees, and salaried employees are the same as the methods of computing overtime pay at the regular rate.

Example 1. Under an employment agreement the basic rate to be used in computing overtime compensation for a piece worker for hours of work in excess of 8 in each day is the employee's average hourly earnings for all work performed during that day.²³ The employee is entitled to one-half the basic rate for each daily overtime hour in addition to the total piece work earnings for the day.

Example 2. An employee, who normally would come within the forty hour provision of section 7(a) of the Act, has a basic rate which is his monthly salary divided by the number of regular hours of work in the

²² See §§ 778.208 through 778.225 of this chapter for further discussion of the exclusion of vacation pay, holiday pay, discretionary bonuses and other payments from the average hourly earnings which comprise the employee's regular rate of pay.

²³ See § 548.302.

month.²⁴ If the salary is intended to cover straight-time compensation for a forty hour week he would be entitled to overtime for every hour after forty computed on the basis of one and one-half times the established basic rate, in addition to his monthly salary. If the salary is intended to cover a workweek shorter than forty hours, such as thirty-five hours, he would be entitled to additional straight time at the basic rate for the hours between thirty-five and forty and also to overtime at one and one-half time that rate for all hours worked in excess of forty in a week.

[20 FR 5683, Aug. 6, 1955, as amended at 26 FR 7732, Aug. 18, 1961]

§ 548.501 Overtime hours based on nonstatutory standards.

Many employees are paid daily overtime pay or Saturday overtime pay or overtime pay on a basis other than the statutory standard of overtime pay required by section 7(a) of the Act. In these cases, the number of hours for which an employee is paid at least one and one-half times an established basic rate must equal or exceed the number of hours worked in excess of the applicable number of hours established in section 7(a) of the Act in the workweek. However, only overtime hours under the employment agreement which also qualify as overtime hours under section 7(e) (5), (6), or (7) of the Act²⁵ may be offset against the hours of work in excess of the applicable number of hours established in section 7(a) of the Act.

[26 FR 7732, Aug. 18, 1961]

§ 548.502 Other payments.

Extra overtime compensation must be separately computed and paid on payments such as bonuses or shift differentials which are not included in the computation of the established basic rate and which would have been included in the regular rate of pay.²⁶

Example 1. An employee is paid on an hourly rate basis plus a production bonus, and also a shift differential of 10 cents for each

²⁴ See § 548.301.

²⁵ See §§ 778.201 through 778.207 of this chapter.

²⁶ Unless specifically excluded by agreement or understanding and prior authorization is obtained from the Administrator. See § 548.400(b).

hour worked on the second shift. The authorized basic rate under the agreement is the employee's daily average hourly earnings, and under the employment agreement he is paid one and one-half times the basic rate for all hours worked in excess of 8 each day. Suppose his production bonus is included in the computation of the basic rate, but the shift differential is not. In addition to overtime compensation computed at the basic rate the employee must be paid an extra 5 cents for each overtime hour worked on the second shift.

Example 2. A piece worker, under his employment agreement, is paid overtime compensation for daily overtime and for hours of work on Saturday based on an authorized basic rate obtained by averaging his piece work earnings for the half-month. In addition, he is paid a monthly cost-of-living bonus which is not included in the computation of the basic rate. It will be necessary for the employer to compute and pay overtime compensation separately on the bonus.²⁷

[20 FR 5683, Aug. 6, 1955]

PART 549—REQUIREMENTS OF A “BONA FIDE PROFIT-SHARING PLAN OR TRUST”

Sec.

549.0 Scope and effect of regulations.

549.1 Essential requirements for qualifications.

549.2 Disqualifying provisions.

549.3 Distinction between plan and trust.

AUTHORITY: Sec. 7, 52 Stat. 1063, as amended; 29 U.S.C. 207.

SOURCE: 18 FR 3292, June 10, 1953, unless otherwise noted.

§ 549.0 Scope and effect of regulations.

(a) The regulations in this part set forth the requirements of a “bona fide profit-sharing plan or trust” under section 7(e)(3)(b) of the Fair Labor Standards Act of 1938, as amended (hereinafter called the Act). In determining the total remuneration for employment which section 7(e) of the Act requires to be included in the regular rate at which an employee is employed, it is not necessary to include any sums paid to or on behalf of such employee, in recognition of services performed by him during a given period, which are paid pursuant to a bona fide profit-

sharing plan or trust meeting the requirements set forth herein. In the formulation of these regulations due regard has been given to the factors and standards set forth in section 7(e)(3)(b) of the Act.

(b) The inclusion or exclusion from the regular rate of contributions made by an employer pursuant to any plan or trust for providing old age, retirement, life, accident or health insurance or similar benefits for employees (regardless of whether the plan or trust is financed out of profits) is governed by section 7(e)(4) of the Act, the requirements of which are set forth in the Interpretative Bulletin on Overtime Compensation, part 778, of this chapter, §§ 778.214 and 778.215. However, where such a plan or trust is combined in a single program (whether in one or more documents) with a plan or trust for providing profit-sharing payments to employees, the profit-sharing payments may be excluded from the regular rate if they meet the requirements of the regulations in this part and the contributions made by the employer for providing the benefits described in section 7(e)(4) of the Act may be excluded from the regular rate if they meet the tests set forth in the Interpretative Bulletin, part 778, of this chapter, §§ 778.214 and 778.215.

§ 549.1 Essential requirements for qualifications.

(a) A bona fide profit-sharing plan or trust for purposes of section 7(e)(3)(b) of the Act is required to meet all of the standards set forth in paragraphs (b) through (g) of this section and must not contain any of the disqualifying provisions set forth in § 549.2.

(b) The profit-sharing plan or trust constitutes a definite program or arrangement in writing, communicated or made available to the employees, which is established and maintained in good faith for the purpose of distributing to the employees a share of profits as additional remuneration over and above the wages or salaries paid to employees which wages or salaries are not dependent upon or influenced by the existence of such profit-sharing plan or trust or the amount of the payments made pursuant thereto.

²⁷ See § 778.209 of this chapter for an explanation of how to compute overtime on the bonus.