

## Wage and Hour Division, Labor

## § 778.1

### PRIZES AS BONUSES

- 778.330 Prizes or contest awards generally.
- 778.331 Awards for performance on the job.
- 778.332 Awards for activities not normally part of employee's job.
- 778.333 Suggestion system awards.

### Subpart E—Exceptions From the Regular Rate Principles

#### COMPUTING OVERTIME PAY ON AN "ESTABLISHED" RATE

- 778.400 The provisions of section 7(g)(3) of the Act.
- 778.401 Regulations issued under section 7(g)(3).

#### GUARANTEED COMPENSATION WHICH INCLUDES OVERTIME PAY

- 778.402 The statutory exception provided by section 7(f) of the Act.
- 778.403 Constant pay for varying workweeks including overtime is not permitted except as specified in section 7(f).
- 778.404 Purposes of exemption.
- 778.405 What types of employees are affected.
- 778.406 Nonovertime hours as well as overtime hours must be irregular if section 7(f) is to apply.
- 778.407 The nature of the section 7(f) contract.
- 778.408 The specified regular rate.
- 778.409 Provision for overtime pay.
- 778.410 The guaranty under section 7(f).
- 778.411 Sixty-hour limit on pay guaranteed by contract.
- 778.412 Relationship between amount guaranteed and range of hours employee may be expected to work.
- 778.413 Guaranty must be based on rates specified in contract.
- 778.414 "Approval" of contracts under section 7(f).

#### COMPUTING OVERTIME PAY ON THE RATE APPLICABLE TO THE TYPE OF WORK PERFORMED IN OVERTIME HOURS (SECS. 7(G)(1) AND (2))

- 778.415 The statutory provisions.
- 778.416 Purpose of provisions.
- 778.417 General requirements of section 7(g).
- 778.418 Pieceworkers.
- 778.419 Hourly workers employed at two or more jobs.
- 778.420 Combined hourly rates and piece rates.
- 778.421 Offset hour for hour.

### Subpart F—Pay Plans Which Circumvent the Act

#### DEVICES TO EVADE THE OVERTIME REQUIREMENTS

- 778.500 Artificial regular rates.
- 778.501 The "split-day" plan.

### PSEUDO-BONUSES

- 778.502 Artificially labeling part of the regular wages a "bonus".
- 778.503 Pseudo "percentage bonuses".

### Subpart G—Miscellaneous

- 778.600 Veterans' subsistence allowances.
- 778.601 Special overtime provisions available for hospital and residential care establishments under section 7(j).
- 778.602 Special overtime provisions under section 7(b).
- 778.603 Special overtime provisions for certain employees receiving remedial education under section 7(q).

AUTHORITY: 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.*

SOURCE: 33 FR 986, Jan. 26, 1968, unless otherwise noted.

### Subpart A—General Considerations

#### § 778.0 Introductory statement.

The Fair Labor Standards Act, as amended, hereinafter referred to as the Act, is a Federal statute of general application which establishes minimum wage, overtime pay, child labor, and equal pay requirements that apply as provided in the Act. All employees whose employment has the relationship to interstate or foreign commerce which the Act specifies are subject to the prescribed labor standards unless specifically exempted from them. Employers having such employees are required to comply with the Act's provisions in this regard unless relieved therefrom by some exemption in the Act. Such employers are also required to comply with specified recordkeeping requirements contained in part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

#### § 778.1 Purpose of interpretative bulletin.

This part 778 constitutes the official interpretation of the Department of Labor with respect to the meaning and application of the maximum hours and overtime pay requirements contained

## § 778.2

in section 7 of the Act. It is the purpose of this bulletin to make available in one place the interpretations of these provisions which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect. These official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (Reorg. Pl. 6 of 1950, 64 Stat. 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

## 29 CFR Ch. V (7-1-06 Edition)

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