

toward overtime compensation due under the Act.

(b) *Limitations on exclusion.* This provision of section 7(e)(2) deals with the type of absences which are infrequent or sporadic or unpredictable. It has no relation to regular "absences" such as lunch periods nor to regularly scheduled days of rest. Sundays may not be workdays in a particular plant, but this does not make them either "holidays" or "vacations," or days on which the employee is absent because of the failure of the employer to provide sufficient work. The term holiday is read in its ordinary usage to refer to those days customarily observed in the community in celebration of some historical or religious occasion; it does not refer to days of rest given to employees in lieu of or as an addition to compensation for working on other days.

(c) *Failure to provide work.* The term "failure of the employer to provide sufficient work" is intended to refer to occasional, sporadically recurring situations where the employee would normally be working but for such a factor as machinery breakdown, failure of expected supplies to arrive, weather conditions affecting the ability of the employee to perform the work and similarly unpredictable obstacles beyond the control of the employer. The term does not include reduction in work schedule (as discussed in §§ 778.321 through 778.329), ordinary temporary layoff situations, or any type of routine, recurrent absence of the employee.

(d) *Other similar cause.* The term "other similar cause" refers to payments made for periods of absence due to factors like holidays, vacations, sickness, and failure of the employer to provide work. Examples of "similar causes" are absences due to jury service, reporting to a draft board, attending a funeral of a family member, inability to reach the workplace because of weather conditions. Only absences of a nonroutine character which are infrequent or sporadic or unpredictable are included in the "other similar cause" category.

**§ 778.219 Pay for foregoing holidays and vacations.**

(a) *Sums payable whether employee works or not.* As explained in § 778.218, certain payments made to an employee for periods during which he performs no work because of a holiday or vacation are not required to be included in the regular rate because they are not regarded as compensation for working. Suppose an employee who is entitled to such a paid idle holiday or paid vacation foregoes his holiday or vacation and performs work for the employer on the holiday or during the vacation period. If, under the terms of his employment, he is entitled to a certain sum as holiday or vacation pay, whether he works or not, and receives pay at his customary rate (or higher) in addition for each hour that he works on the holiday or vacation day, the certain sum allocable to holiday or vacation pay is still to be excluded from the regular rate. It is still not regarded as compensation for hours of work if he is otherwise compensated at his customary rate (or at a higher rate) for his work on such days. Since it is not compensation for work it may not be credited toward overtime compensation due under the Act. Two examples in which the maximum hours standard is 40 hours may serve to illustrate this principle:

(1) An employee whose rate of pay is \$5 an hour and who usually works a 6-day 48-hour week is entitled, under his employment contract, to a week's paid vacation in the amount of his usual straight-time earnings—\$240. He foregoes his vacation and works 50 hours in the week in question. He is owed \$250 as his total straight-time earnings for the week, and \$240 in addition as his vacation pay. Under the statute he is owed an additional \$25 as overtime premium (additional half-time) for the 10 hours in excess of 40. His regular rate of \$5 per hour has not been increased by virtue of the payment of \$240 vacation pay, but no part of the \$240 may be offset against the statutory overtime compensation which is due. (Nothing in this example is intended to imply that the employee has a statutory right to \$240 or any other sum as vacation pay. This is a matter of private contract between the parties who may agree that

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vacation pay will be measured by straight-time earnings for any agreed number of hours or days, or by total normal or expected take-home pay for the period or that no vacation pay at all will be paid. The example merely illustrates the proper method of computing overtime for an employee whose employment contract provides \$240 vacation pay.)

(2) An employee who is entitled under his employment contract to 8 hours' pay at his rate of \$5 an hour for the Christmas holiday, foregoes his holiday and works 9 hours on that day. During the entire week he works a total of 50 hours. He is paid under his contract, \$250 as straight-time compensation for 50 hours plus \$40 as idle holiday pay. He is owed, under the statute, an additional \$25 as overtime premium (additional half-time) for the 10 hours in excess of 40. His regular rate of \$5 per hour has not been increased by virtue of the holiday pay but no part of the \$40 holiday pay may be credited toward statutory overtime compensation due.

(b) *Premiums for holiday work distinguished.* The example in paragraph (a)(2) of this section should be distinguished from a situation in which an employee is entitled to idle holiday pay under the employment agreement only when he is actually idle on the holiday, and who, if he foregoes his holiday also, under his contract, foregoes his idle holiday pay.

(1) The typical situation is one in which an employee is entitled by contract to 8 hours' pay at his rate of \$5 an hour for certain named holidays when no work is performed. If, however, he is required to work on such days, he does not receive his idle holiday pay. Instead he receives a premium rate of \$7.50 (time and one-half) for each hour worked on the holiday. If he worked 9 hours on the holiday and a total of 50 hours for the week, he would be owed, under his contract, \$67.50 (9×\$7.50) for the holiday work and \$205 for the other 41 hours worked in the week, a total of \$272.50. Under the statute (which does not require premium pay for a holiday) he is owed \$275 for a workweek of 50 hours at a rate of \$5 an hour. Since the holiday premium is one and one-half times the established rate for nonholiday work, it does not increase the reg-

ular rate because it qualifies as an overtime premium under section 7(e)(6), and the employer may credit it toward statutory overtime compensation due and need pay the employee only the additional sum of \$2.50 to meet the statutory requirements. (For a discussion of holiday premiums see § 778.203.)

(2) If all other conditions remained the same but the contract called for the payment of \$10 (double time) for each hour worked on the holiday, the employee would receive, under his contract \$90 (9×\$10) for the holiday work in addition to \$205 for the other 41 hours worked, a total of \$295. Since this holiday premium is also an overtime premium under section 7(e)(6), it is excludable from the regular rate and the employer may credit it toward statutory overtime compensation due. Because the total thus paid exceeds the statutory requirements, no additional compensation is due under the Act. In distinguishing this situation from that in the example in paragraph (a)(2) of this section, it should be noted that the contract provisions in the two situations are different and result in the payment of different amounts. In example (2) the employee received a total of \$85 attributable to the holiday: 8 hours' idle holiday pay at \$5 an hour, due him whether he worked or not, and \$45 pay at the nonholiday rate for 9 hours' work on the holiday. In the situation discussed in this paragraph the employee received \$90 pay for working on the holiday—double time for 9 hours of work. Thus, clearly, all of the pay in this situation is paid for and directly related to the number of hours worked on the holiday.

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§ 778.220 “Show-up” or “reporting” pay.

(a) *Applicable principles.* Under some employment agreements, an employee may be paid a minimum of a specified number of hours' pay at the applicable straight time or overtime rate on infrequent and sporadic occasions when, after reporting to work at his scheduled starting time on a regular work day or on another day on which he has