

Wage and Hour Division, Labor

§ 778.307

HOW DEDUCTIONS AFFECT THE REGULAR RATE

§ 778.304 Amounts deducted from cash wages—general.

(a) The word “deduction” is often loosely used to cover reductions in pay resulting from several causes:

(1) Deductions to cover the cost to the employer of furnishing “board, lodging or other facilities,” within the meaning of section 3(m) of the Act.

(2) Deductions for other items such as tools and uniforms which are not regarded as “facilities.”

(3) Deductions authorized by the employee (such as union dues) or required by law (such as taxes and garnishments).

(4) Reductions in a fixed salary paid for a fixed workweek in weeks in which the employee fails to work the full schedule.

(5) Deductions for disciplinary reasons.

(b) In general, where such deductions are made, the employee’s “regular rate” is the same as it would have been if the occasion for the deduction had not arisen. Also, as explained in part 531 of this chapter, the requirements of the Act place certain limitations on the making of some of the above deductions.

[33 FR 986, Jan. 26, 1968, as amended at 46 FR 7314, Jan. 23, 1981]

§ 778.305 Computation where particular types of deductions are made.

The regular rate of pay of an employee whose earnings are subject to deductions of the types described in paragraphs (a)(1), (2), and (3) of § 778.304 is determined by dividing his total compensation (except statutory exclusions) before deductions by the total hours worked in the workweek. (See also §§ 531.36–531.40 of this chapter.)

§ 778.306 Salary reductions in short workweeks.

(a) The reductions in pay described in § 778.304(a)(4) are not, properly speaking, “deductions” at all. If an employee is compensated at a fixed salary for a fixed workweek and if this salary is reduced by the amount of the average hourly earnings for each hour lost by

the employee in a short workweek, the employee is, for all practical purposes, employed at an hourly rate of pay. This hourly rate is the quotient of the fixed salary divided by the fixed number of hours it is intended to compensate. If an employee is hired at a fixed salary of \$200 for a 40-hour week, his hourly rate is \$5. When he works only 36 hours he is therefore entitled to \$180. The employer makes a “deduction” of \$20 from his salary to achieve this result. The regular hourly rate is not altered.

(b) When an employee is paid a fixed salary for a workweek of variable hours (or a guarantee of pay under the provisions of section 7(f) of the Act, as discussed in §§ 778.402 through 778.414), the understanding is that the salary or guarantee is due the employee in short workweeks as well as in longer ones and “deductions” of this type are not made. Therefore, in cases where the understanding of the parties is not clearly shown as to whether a fixed salary is intended to cover a fixed or a variable workweek the practice of making “deductions” from the salary for hours not worked in short weeks will be considered strong, if not conclusive, evidence that the salary covers a fixed workweek.

[33 FR 986, Jan. 26, 1968, as amended at 46 FR 7314, Jan. 23, 1981]

§ 778.307 Disciplinary deductions.

Where deductions as described in § 778.304(a)(5) are made for disciplinary reasons, the regular rate of an employee is computed before deductions are made, as in the case of deductions of the types in paragraphs (a) (1), (2), and (3) of § 778.304. Thus where disciplinary deductions are made from a pieceworker’s earnings, the earnings at piece rates must be totaled and divided by the total hours worked to determine the regular rate before the deduction is applied. In no event may such deductions (or deductions of the type described in § 778.304(a)(2)) reduce the earnings to an average below the applicable minimum wage or cut into any part of the overtime compensation due the employee. For a full discussion of the limits placed on such deductions, see part 531 of this chapter. The principles set forth therein with relation to