

	M	T	W	T	F	S	S
Hours spent on task .....	6	7	7	9	8½	6	0
Day's pay under contract .....	\$40	\$40	\$40	\$40	\$40	\$60	0
Additional hours .....	2	0	2	0	½	0	0
Additional pay under contract .....	\$15	0	\$15	\$7.50	\$7.50	0	0

(b) In the example in paragraph (a) of this section the employee has actually worked a total of 48 hours and is owed under the contract a total of \$305 for the week. The only sums which can be excluded as overtime premiums from this total before the regular rate is determined are the extra \$2.50 payments for the extra hour on Thursday and Friday made because of work actually in excess of 8 hours. The payment of the other premium rates under the contract is either without regard to whether or not the hours they compensated were in excess of a bona fide daily or weekly standard or without regard to the number of overtime hours worked. Thus only the sum of \$5 is excluded from the total. The remaining \$300 is divided by 48 hours to determine the regular rate—\$6.25 per hour. One-half this rate is due under the Act as extra compensation for each of the 8 overtime hours—\$25. The \$5 payment under the contract for actual excess hours may be credited and the balance—\$20—is owed in addition to the \$305 due under the contract.

[46 FR 7315, Jan. 23, 1981]

**§ 778.314 Special situations.**

There may be special situations in which the facts demonstrate that the hours for which contract overtime compensation is paid to employees working on a "task" or "stint" basis actually qualify as overtime hours under section 7(e)(5), (6), or (7). Where this is true, payment of one and one-half times an agreed hourly rate for "task" or "stint" work may be equivalent to payment pursuant to agreement of one and one-half time a piece rate. The alternative methods of overtime pay computation permitted by section 7(g)(1) or (2), as explained in §§ 778.415 through 778.421 may be applicable in such a case.

**EFFECT OF FAILURE TO COUNT OR PAY FOR CERTAIN WORKING HOURS**

**§ 778.315 Payment for all hours worked in overtime workweek is required.**

In determining the number of hours for which overtime compensation is due, all hours worked (see § 778.223) by an employee for an employer in a particular workweek must be counted. Overtime compensation, at a rate not less than one and one-half times the regular rate of pay, must be paid for each hour worked in the workweek in excess of the applicable maximum hours standard. This extra compensation for the excess hours of overtime work under the Act cannot be said to have been paid to an employee unless all the straight time compensation due him for the nonovertime hours under his contract (express or implied) or under any applicable statute has been paid.

**§ 778.316 Agreements or practices in conflict with statutory requirements are ineffective.**

While it is permissible for an employer and an employee to agree upon different base rates of pay for different types of work, it is settled under the Act that where a rate has been agreed upon as applicable to a particular type of work the parties cannot lawfully agree that the rate for that work shall be lower merely because the work is performed during the statutory overtime hours, or during a week in which statutory overtime is worked. Since a lower rate cannot lawfully be set for overtime hours it is obvious that the parties cannot lawfully agree that the working time will not be paid for at all. An agreement that only the first 8 hours of work on any days or only the hours worked between certain fixed hours of the day or only the first 40 hours of any week will be counted as working time will clearly fail of its evasive purpose. An announcement by