

**Wage and Hour Division, Labor**

**§ 778.603**

the general principles set forth in this part 778.

[33 FR 986, Jan. 26, 1968, as amended at 46 FR 7319, Jan. 23, 1981; 46 FR 33516, June 30, 1981]

**§ 778.602 Special overtime provisions under section 7(b).**

(a) *Daily and weekly overtime standards.* The general overtime pay requirements of the Act provide for such pay only when the number of hours worked exceeds the standard specified for the workweek; no overtime compensation on a daily basis is required. However, section 7 of the Act, in subsection (b), provides certain partial exemptions from the general overtime provisions, each of which is conditioned upon the payment to the employee of overtime compensation at a rate not less than one and one-half times his regular rate of pay for his hours worked in the workweek in excess of daily, as well as weekly, standards specified in the subsection. Under these provisions, when an employee works in excess of both the daily and weekly maximum hours standards in any workweek for which such an exemption is claimed, he must be paid at such overtime rate for all hours worked in the workweek in excess of the applicable daily maximum or in excess of the applicable weekly maximum, whichever number of hours is greater. Thus, if his total hours of work in the workweek which are in excess of the daily maximum are 10, and his hours in excess of the weekly maximum are 8, overtime compensation is required for 10 hours, not 8.

(b) *Standards under section 7(b).* The partial exemptions provided by section 7(b) apply to an employee under the conditions specified in clause (1), (2), or (3) of the subsection "if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed." As an example, suppose an employee is employed under the other conditions specified for an exemption under section 7(b) at an hourly rate of \$5.20 and works the following schedule:

Hours	M	T	W	T	F	S	S	Tot.
Worked .....	14	9	10	15	12	8	0	68

Number of overtime hours: Daily, 5 (hours over 12); weekly, 12 (hours over 56).

Since the weekly overtime hours are greater, the employee is entitled to pay for 12 hours at \$7.80 an hour ( $1\frac{1}{2} \times \$5.20$ ), a total of \$93.60 for the overtime hours, and to pay at his regular rate for the remaining 56 hours ( $56 \times \$5.20$ ) in the amount of \$291.20 or a total of \$384.80 for the week. If the employee had not worked the 8 hours on Saturday, his total hours worked in the week would have been 60, of which five were daily overtime hours, and there would have been no weekly overtime hours under the section 7(b) standard. For such a schedule the employee would be entitled to 5 hours of overtime pay at time and one-half ( $5 \times 1\frac{1}{2} \times \$5.20 = \$39$ ) plus the pay at his regular rate for the remaining 55 hours ( $55 \times \$5.20 = \$286$ ), making a total of \$325 due him for the week.

[33 FR 986, Jan. 26, 1968, as amended at 34 FR 144, Jan. 4, 1969; 46 FR 7319, Jan. 23, 1981]

**§ 778.603 Special overtime provisions for certain employees receiving remedial education under section 7(q).**

Section 7(q) of the Act, enacted as part of the 1989 Amendments, provides an exemption from the overtime pay requirements for time spent by certain employees who are receiving remedial education. The exemption provided by section 7(q), as implemented by these regulations, allows any employer to require that an employee spend up to 10 hours in the aggregate in any workweek in remedial education without payment of overtime compensation provided that the employee lacks a high school diploma or educational attainment at the eighth-grade level; the remedial education is designed to provide reading and other basic skills at an eighth-grade level or below, or to fulfill the requirements for a high school diploma or General Educational Development (GED) certificate; and the remedial education does not include job-specific training. Employees must be compensated at their regular rate of pay for the time spent receiving such remedial education. The employer must maintain a record of the hours

that an employee is engaged each workday and each workweek in receiving remedial education, and the compensation paid each pay period for the time so engaged, as described in 29 CFR 516.34. The remedial education must be conducted during discrete periods of time set aside for such a program, and, to the maximum extent practicable, away from the employee's normal work station. An employer has the burden to establish compliance with all applicable requirements of this special overtime provision as set forth in section 7(q) of the Act and in this section of the regulations. Section 7(q) is solely an exemption from the overtime provisions of section 7(a) of the Act. It is not an exemption from the requirements of any other law that regulates employment practices, including the standards that are used to select individuals for employment. An employer creating a remedial education program pursuant to section 7(q) should be mindful not to violate other applicable requirements. See, for example, title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*; Executive Order 11246, as amended, 3 CFR part 339 (1964-1965 Compilation), *reprinted in* 42 U.S.C. 2000e note; the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*; and the Uniform Guidelines on Employee Selection Procedures published at 41 CFR part 60-3.

[56 FR 61101, Nov. 29, 1991]

## PART 779—THE FAIR LABOR STANDARDS ACT AS APPLIED TO RETAILERS OF GOODS OR SERVICES

### Subpart A—General

#### INTRODUCTORY

Sec.

- 779.0 Purpose of interpretative bulletin.
- 779.1 General scope of the Act.
- 779.2 Previous and new coverage.
- 779.3 Pay standards for employees subject to previous coverage of the Act.
- 779.4 Pay standards for newly covered employment.
- 779.5 Matters discussed in this part.
- 779.6 Matters discussed in other interpretative bulletins.

#### INTERPRETATIONS OF THE LAW

- 779.7 Significance of official interpretations.
- 779.8 Basic support for interpretations.
- 779.9 Reliance on interpretations.
- 779.10 Interpretations made, continued, and superseded by this part.

#### SOME BASIC DEFINITIONS

- 779.11 General statement.
- 779.12 Commerce.
- 779.13 Production.
- 779.14 Goods.
- 779.15 Sale and resale.
- 779.16 State.
- 779.17 Wage and wage payments to tipped employees.
- 779.18 Regular rate.
- 779.19 Employer, employee, and employ.
- 779.20 Person.
- 779.21 Enterprise.
- 779.22 Enterprise engaged in commerce or in the production of goods for commerce.
- 779.23 Establishment.
- 779.24 Retail or service establishment.

### Subpart B—Employment to Which the Act May Apply: Basic Principles and Individual Coverage

#### GENERAL PRINCIPLES

- 779.100 Basic coverage in general.
- 779.101 Guiding principles for applying coverage and exemption provisions.
- 779.102 Scope of this subpart.

#### EMPLOYEES ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE

- 779.103 Employees "engaged in commerce."
- 779.104 Employees "engaged in the production of goods for commerce."
- 779.105 Employees engaged in activities "closely related" and "directly essential" to the production of goods for commerce.
- 779.106 Employees employed by an independent employer.
- 779.107 Goods defined.
- 779.108 Goods produced for commerce.
- 779.109 Amount of activities which constitute engaging in commerce or in the production of goods for commerce.
- 779.110 Employees in retailing whose activities may bring them under the Act.
- 779.111 Buyers and their assistants.
- 779.112 Office employees.
- 779.113 Warehouse and stock room employees.
- 779.114 Transportation employees.
- 779.115 Watchmen and guards.
- 779.116 Custodial and maintenance employees.
- 779.117 Salesmen and sales clerks.
- 779.118 Employees providing central services for multi-unit organizations.