

§ 779.17

§ 779.17 Wage and wage payments to tipped employees.

Section 3(m) of the Act provides that as used in the Act, “wage” paid to any employee:

includes the reasonable cost, as determined by the Secretary of Labor, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount.

As explained in part 531 of this chapter, section 3(m) of the Act governs the payment of wages required by the Act, including payment in other than cash and in tips. Part 531 of this chapter contains the regulations under which the reasonable cost or fair value of such facilities furnished may be computed for inclusion as part of wages required by the Act. Section 3(m) provides a method for determining the wage of a “tipped employee” and this term as defined in section 3(t) of the Act “means any employee engaged in an occupation in which he customarily and regularly receives more than \$20 a month in tips”. Regulations under

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which wage credits are permitted on account of tips paid to “tipped employees” are also contained in part 531 of this chapter.

§ 779.18 Regular rate.

As explained in the interpretative bulletin on overtime compensation, part 778 of this chapter, employees subject to the overtime pay provisions of the Act must generally receive for their overtime work in any workweek as provided in the Act not less than one and one-half times their regular rates of pay. Section 7(e) of the Act defines “regular rate” in the following language:

(e) As used in this section the *regular rate* at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include:

(1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses or other expenses, incurred by an employee in the furtherance of his employer’s interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor set forth in appropriate regulation which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs;