

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210



September 5, 1972

MEMORANDUM #106

TO : All Government Contracting Agencies of the Federal
Government and the District of Columbia

SUBJECT: Computing Liquidated Damages Under the Contract Work
Hours and Safety Standards Act

We have had recent inquiries regarding the proper method of computing liquidated damages for violations of the Contract Work Hours and Safety Standards Act, especially in those instances where the contractor has paid some overtime.

The enclosed principles regarding "computation of liquidated damages" are followed by the Wage and Hour Division in carrying out its enforcement and administrative responsibilities under the Contract Work Hours and Safety Standards Act. They are furnished for your assistance and guidance in carrying out your responsibilities under that Act.

Section 102(b)(2) of the Contract Work Hours and Safety Standards Act dealing with liquidated damages requires that "liquidated damages shall be computed, with respect to each individual employed as a laborer or mechanic in violation of any provision of this Act, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by this Act."

When computing liquidated damages it has been determined that such damages may not be computed independently of the wage payment obligations provided in the Act. Consequently, when the Act requires that a contractor or subcontractor pay either weekly or daily overtime, depending upon which is most beneficial to the employee involved, liquidated damages may be computed only to the extent that the contractor has failed to meet his obligations. This principle may be best illustrated by the following examples where no overtime was paid:

186

If the daily overtime hours equal or exceed the weekly overtime hours, liquidated damages should be computed for the calendar days upon which daily overtime is worked. On the other hand, if the weekly overtime hours exceed the daily overtime hours, liquidated damages should be computed for the days on which the weekly overtime hours were worked. Thus:

Example 1

| | M | T | W | T | F | S | S | <u>Computation of Overtime</u> | |
|----|---|---|---|---|---|---|---|--------------------------------|-----------------------|
| | | | | | | | | <u>Daily</u> | <u>Weekly</u> |
| OT | 1 | 2 | 3 | 4 | 2 | | | 12 | 12 (no overtime paid) |
| ST | 8 | 8 | 8 | 8 | 8 | 0 | 0 | 40 | 40 |

In the above example, where the daily overtime hours equal the weekly overtime hours, liquidated damages should be computed for the calendar days upon which daily overtime is worked. In this case \$50 in liquidated damages would be computed.

Example 2

| | M | T | W | T | F | S | S | <u>Computation of Overtime</u> | |
|----|---|---|---|---|---|---|---|--------------------------------|----------------------|
| | | | | | | | | <u>Daily</u> | <u>Weekly</u> |
| OT | 2 | 3 | 4 | 2 | | | | 11 | 3 (no overtime paid) |
| ST | 8 | 8 | 8 | 8 | 0 | 0 | 0 | 32 | 40 |

In this case, the daily overtime exceeds the weekly overtime so liquidated damages would be computed for Monday, Tuesday, Wednesday, and Thursday, or \$40.

Example 3

| | M | T | W | T | F | S | S | <u>Computation of Overtime</u> | |
|----|---|---|---|---|---|---|---|--------------------------------|-----------------------|
| | | | | | | | | <u>Daily</u> | <u>Weekly</u> |
| OT | 2 | 4 | 5 | 1 | 3 | | | 15 | 23 (no overtime paid) |
| ST | 8 | 8 | 8 | 8 | 8 | 8 | 0 | 48 | 40 |

In the above example, liquidated damages would be computed for the weekly overtime hours, because they exceed the daily overtime hours. Weekly overtime hours were worked on three calendar days, Thursday, Friday, and Saturday and thus \$30 in liquidated damages would be computed.

In some cases, the contractor may pay weekly overtime (after 40 or 42 or 44 hours per week) but not daily overtime. If the daily overtime hours in such cases equal or exceed the weekly overtime hours, the weekly overtime hours for which payment has been made may be used to offset the daily hours as they accrue. On the other hand, if the weekly overtime hours exceed the daily overtime hours, liquidated damages should be computed for the days on which the weekly overtime hours not paid for at time and one half were worked. The following examples will illustrate the application of this principle.

Example 4

| | M | T | W | T | F | S | S | <u>Computation of Overtime</u> | |
|----|---|---|---|---|---|---|-----|--------------------------------|----------------------------|
| | | | | | | | | <u>Daily</u> | <u>Weekly</u> |
| OT | 3 | 1 | 1 | | | | 0 0 | 5 | 2 (2 hours over-time paid) |
| ST | 8 | 8 | 8 | 8 | 5 | | | 37 | 40 |

In the above example the employer paid weekly overtime after 40 hours per week thus, the 2 weekly overtime hours paid for at time and one half will offset only 2 of the daily overtime hours worked on Monday, still leaving Monday as an "overtime" day. Therefore, liquidated damages should be computed for Monday, Wednesday, and Thursday and would be \$30.

Example 5

| | M | T | W | T | F | S | S | <u>Computation of Overtime</u> | |
|----|---|---|---|---|---|---|---|--------------------------------|---------------------------|
| | | | | | | | | <u>Daily</u> | <u>Weekly</u> |
| OT | 1 | 1 | | | 3 | | | 5 | 2 (2 hours overtime paid) |
| ST | 8 | 8 | 8 | 5 | 8 | | | 37 | 40 |

In the above example the employer paid weekly overtime after 40 hours per week. Thus, the 2 weekly overtime hours paid for at time and one half will offset all the daily overtime hours worked on Monday and Tuesday. Therefore, liquidated damages should be computed for Friday only and would be \$10.

Example 6

| | M | T | W | T | F | S | S | <u>Computation of Overtime</u> | |
|----|---|---|---|---|---|---|-----|--------------------------------|----------------------------|
| | | | | | | | | <u>Daily</u> | <u>Weekly</u> |
| OT | 3 | 4 | 4 | | | | 0 0 | 11 | 11 (7 hours overtime paid) |
| ST | 8 | 8 | 8 | 8 | 8 | | | 40 | 40 |

In the above example, the contractor paid weekly overtime after 44 hours in the workweek. The 7 weekly overtime hours paid for at time and one half will offset the daily overtime hours on Monday and Wednesday. Therefore, liquidated damages should be computed for Friday only, or \$10.

Example 7

| | M | T | W | T | F | S | S | <u>Computation of Overtime</u> | |
|----|---|---|---|---|---|---|-----|--------------------------------|---------------------------|
| | | | | | | | | <u>Daily</u> | <u>Weekly</u> |
| OT | | 1 | 1 | | | | 5 0 | 2 | 7 (3 hours overtime paid) |
| ST | 8 | 8 | 8 | 8 | 8 | | | 45 | 40 |

In this example, the contractor paid weekly overtime after 44 hours in the workweek (3 hours at time and one half). Weekly overtime hours not paid for at time and one half occurred on Saturday only and thus \$10 would be computed in damages.

Horace E. Menasco.

Horace E. Menasco
Deputy Assistant Secretary