



October 13, 2004

FLSA2004-23NA

Dear *Name**,

This is in response to your request for an opinion concerning the application of the Fair Labor Standards Act (FLSA) to a pay plan described as follows:

- An employee is normally scheduled to work Monday, Tuesday, Wednesday and Sunday.
- The employee is paid \$9.00 per hour.
- The workweek is Monday through Sunday.
- All hours on Saturday are paid at double time, if the employee works on Saturday.

You provide an example of an employee working 12 hours per day on Monday, Tuesday and Wednesday and working 8 hours per day on Saturday and Sunday. The employee is paid 40 hours at straight time (40 X \$9.00 = \$360.00), 4 hours at time and one-half (4 X \$13.50 = \$54.00) and 8 hours at double time for the hours worked on Saturday (8 X \$18.00 = \$144.00) for a total of \$558.00.

Based on the above described information, the employee has been paid in compliance with the FLSA. The principles for computing overtime pay are discussed in Regulations, 29 CFR Part 778 (copy enclosed).

Under section 7(a) of the FLSA, the overtime premium must be paid at a rate of pay not less than one and one-half times the regular rate of pay for all hours worked in excess of 40 in a workweek. Under section 7(e), all remuneration for employment must be included in the regular rate, with the exception of certain identified types of payments. Under section 7(e)(6), extra compensation provided by a premium rate paid for work on Saturdays or other regular days of rest may be excluded from the regular rate if the premium rate is at least one and one-half times the regular rate. See 29 CFR 778.203 and 778.205. Therefore, the extra compensation paid for working on Saturday, paid at a double time rate, may be excluded from the regular rate. Moreover, pursuant to section 7(h), that extra compensation may be credited toward the overtime compensation due for the week. See 29 CFR 778.201 and 778.203. Therefore, when the pay is computed as described above, all overtime due has been paid.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this information is responsive to your inquiry.

Sincerely,

Barbara Relerford
Office of Enforcement Policy
Fair Labor Standards Act Team

Enclosure

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*