

*Salaried Employees—Regular Number of Hours*

11. Thus if an employee back in October 1938, received \$23 for a 46 hour week, his regular hourly rate of pay was 50 cents. On October 24, 1938, he became entitled to \$23.50 for that same 46-hour week ( $[46 \text{ hours} \times 50 \text{ cents}] + [2 \text{ hours} \times 25 \text{ cents}]$ ) or ( $[44 \text{ hours} \times 50 \text{ cents}] + [2 \text{ hours} \times 75 \text{ cents}]$ ). On October 24, 1939, he became entitled to \$24 for the same 46 hour week ( $[46 \text{ hours} \times 50 \text{ cents}] + [4 \text{ hours} \times 25 \text{ cents}]$ ) or ( $[42 \text{ hours} \times 50 \text{ cents}] + [4 \text{ hours} \times 75 \text{ cents}]$ ). On October 24, 1940, he became entitled to \$24.50 for the same 46 hour week ( $[46 \text{ hours} \times 50 \text{ cents}] + [6 \text{ hours} \times 25 \text{ cents}]$ ) or ( $[40 \text{ hours} \times 50 \text{ cents}] + [6 \text{ hours} \times 75 \text{ cents}]$ ).

*Salaried Employees—Irrregular or Fluctuating Number of Hours*

12. If an employee earns \$23 per week but works a fluctuating number of hours, his regular rate of pay will be the average hourly rate each week. Suppose that during the course of four weeks the employee works 40, 46, 50 and 41 hours. His regular hourly rate of pay each week is approximately 57.5 cents, 50 cents, 46 cents and 56.1 cents, respectively. For the first week the employee is entitled to be paid \$23; for the second week \$24.50 ( $\$23 + [6 \text{ hours} \times 25 \text{ cents}]$ ) or ( $[40 \text{ hours} \times 50 \text{ cents}] + [6 \text{ hours} \times 75 \text{ cents}]$ ); for the third week \$25.30 ( $\$23 + [10 \text{ hours} \times 23 \text{ cents}]$ ) or ( $[40 \text{ hours} \times 46 \text{ cents}] + [10 \text{ hours} \times 69 \text{ cents}]$ ); for the fourth week approximately \$23.28 ( $\$23 + [1 \text{ hour} \times 28 \text{ cents}]$ ) or ( $[40 \text{ hours} \times 56.1 \text{ cents}] + [1 \text{ hour} \times 84 \text{ cents}]$ ).

*Extra Compensation for Overtime Not Included in Determining Regular Rate of Pay*

13. Extra compensation paid for overtime work need not be included in determining the employee's regular hourly rate of pay. Thus, if an employee earns \$19.50 for a regular 39-hour workweek and time and a half or 75 cents is paid for all hours in excess of 39, the regular hourly rate of pay is still 50 cents an hour and, if the employee worked 46 hours one week, he would be entitled to \$24.75 ( $[39 \text{ hours} \times 50 \text{ cents}] + [7 \text{ hours} \times 75 \text{ cents}]$ ) or ( $[46 \text{ hours} \times 50 \text{ cents}] + [7 \text{ overtime hours} \times 25 \text{ cents}]$ ). The same principle applies to a pieceworker or hourly rate employee where time and a half is given for overtime work.

*Employees Paid at Two Rates of Pay in Single Workweek*

14. If an employee, during a single workweek, is paid at two different rates of pay, his regular hourly rate of pay, on which

time and one-half must be paid, is the average hourly rate for the week, computed by dividing the weekly earnings at both rates by the total number of hours worked in the week. For his overtime work the employee is entitled to a sum, in addition to such earnings, equivalent to one-half the hourly rate of pay, arrived at as indicated, multiplied by the number of hours worked in excess of 40. Thus, suppose an employee works 30 hours a week at an occupation paying 40 cents an hour and 20 hours in the same week at an occupation paying 50 cents an hour. The employee's hourly rate of pay is 44 cents an hour—( $\$22.00 [30 \text{ hours} \times 40 \text{ cents}] + [20 \text{ hours} \times 50 \text{ cents}] \div 50 \text{ hours}$ ) and he is entitled to be paid a total wage of \$24.20 ( $[30 \text{ hours} \times 40 \text{ cents}] + [20 \text{ hours} \times 50 \text{ cents}] + [10 \text{ overtime hours} \times 22 \text{ cents}]$ ). In other words, the employee is entitled to be paid an amount

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not a violation of the statute. Congress intended to make it economically disadvantageous for an employer to work his employees excessive hours. If an employer eliminates the excessive hours, he is under no statutory obligation to increase his total wage bill by increasing the hourly rate. This opinion, however, is based solely upon an interpretation of the requirements of the Act. Whether in a particular case, a contract between the employer and his employees requires the employer to continue to pay the former weekly wage (\$21 in the case supposed) in spite of the reduction of hours to 40; or requires the employer to continue to work his employees 42 hours, paying time and a half for 2 hours, is a question of general contract law about which it is not the function of the Division to express any opinion. Nothing in the Act itself, however, will relieve an employer of