

Subpart B—Interpretations

INTRODUCTION

§ 548.100 Introductory statement.

(a) This subpart contains material explaining and illustrating the terms used in subpart A of this part which were issued under section 7(g)(3) of the Fair Labor Standards Act. The purpose of section 7(g)(3) of the Act, and subpart A of this part, is to provide an exception from the requirements of computing overtime pay at the regular rate,¹ and to allow, under specific conditions, the use of an established “basic” rate² instead. Basic rates are alternatives to the regular rate of pay under section 7(a), and their use is optional. The use of basic rates is principally intended to simplify book-keeping and computation of overtime pay.

(b) Section 7(g) of the Fair Labor Standards Act provides that an employer will comply with the overtime requirements of the Act if:

*** pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection [7](a):

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¹The regular rate is the average hourly earnings of an employee for a workweek. See §§ 778.107 to 778.122 of this chapter on overtime compensation. Sections 7(g)(1) and 7(g)(2) of the Act permit overtime compensation to be computed, under specified conditions, at time and one-half the bona fide hourly or piece rate applicable to the work performed during the overtime hours. See §§ 778.415 to 778.421 of this chapter.

²The term “basic” rate as used in this part means the rate authorized under section 7(g)(3) of the Fair Labor Standards Act. Such a rate may be used to compute overtime compensation under the Walsh-Healey Public Contracts Act. (See Rulings and Interpretations No. 3, section 42(e)(1)). However, the term “basic” rate in this part should not be confused with the more general use of the term in the Public Contracts Act to describe all rates which may be used to compute overtime compensation or the use of the term in any other statute.

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Secretary of Labor as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time; and if (i) the employee’s average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

[20 FR 5680, Aug. 6, 1955, as amended at 26 FR 7731, Aug. 18, 1961]

REQUIREMENTS FOR A BASIC RATE

§ 548.200 Requirements.

The following conditions must be satisfied if a “basic” rate is to be considered proper under section 7(g)(3) and subpart A of this part.

(a) *Agreement or understanding.* There must be an agreement or understanding establishing a basic rate or rates. This agreement must be arrived at before performance of the work to which it is intended to apply. It may be arrived at directly with the employee or through his representative. The “basic” rate method of computing overtime may be used for as many of the employees in an establishment as the employer chooses, provided he has reached an agreement or understanding with these employees prior to the performance of the work.³

(b) *The rate.* The established basic rate may be a specified rate or a rate which can be derived from the application of a specified method of calculation. For instance, under certain conditions the Regulations permit the use of the daily average hourly earnings of the employee as a basis for computing daily overtime.⁴ Thus, a method rather

³The records which an employer is required to maintain and preserve for an employee compensated for overtime hours on the basis of a basic rate are described in §§ 516.5(b)(5) and 516.21 of this subchapter.

⁴See § 548.302.

than a specific rate is authorized. Also, under certain conditions, the cost of a single meal a day furnished to employees may be excluded from the computation of overtime pay.⁵ It is the exclusion of the cost of the meals that is authorized and each employee's rate of pay, whatever it may be—an hourly rate, a piece rate or a salary—is his basic rate.

(c) *Minimum wage.* The employee's average hourly earnings for the workweek (exclusive of overtime pay and other pay which may be excluded from the regular rate)⁶ and the established basic rate used to compute overtime pay may not be less than the legal minimum.⁷

[20 FR 5680, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956]

AUTHORIZED BASIC RATES

§ 548.300 Introductory statement.

Section 548.3 contains a description of a number of basic rates any one of which, when established by agreement or understanding, is authorized for use without prior specific approval of the Administrator. These basic rates have been found in use in industry and the Administrator has determined that they are substantially equivalent to the straight-time average hourly earnings of the employee over a representative period of time. The authorized basic rates are described below.

[20 FR 5681, Aug. 6, 1955]

§ 548.301 Salaried employees.

(a) Section 548.3(a) authorizes as an established basic rate: "A rate per hour which is obtained by dividing a monthly or semi-monthly salary by the number of regular working days in each monthly or semi-monthly period and then by the number of hours in the normal or regular workday. Such a rate may be used to compute overtime compensation for all the overtime hours worked by the employee during the

monthly or semi-monthly period for which the salary is paid."

(b) Section 548.3(a) may be applied to salaried employees paid on a monthly or semi-monthly basis. Under section 7(a) of the Act the method of computing the regular rate of pay for an employee who is paid on a monthly or semi-monthly salary basis is to reduce the salary to its weekly equivalent by multiplying the monthly salary by 12 (the number of months) or the semi-monthly salary by 24, and dividing by 52 (the number of weeks). The weekly equivalent is then divided by the number of hours in the week which the salary is intended to compensate.⁸ Section 548.3(a) is designed to provide an alternative method of computing the rate for overtime purposes in the case of an employee who is compensated on a monthly or semi-monthly salary basis, where this method is found more desirable. This method is applicable only where the salary is paid for a specified number of days per week and a specified number of hours per day normally or regularly worked by the employee. It permits the employer to take into account the variations in the number of regular working days in each pay period. The basic rate authorized by § 548.3(a) is obtained by dividing the monthly or semi-monthly salary by the number of regular working days in the month or half-month, and then by the number of hours of the normal or regular work day.

Example. An employee is compensated at a semi-monthly salary of \$154 for a workweek of 5 days of 8 hours each, Monday through Friday. If a particular half-month begins on Tuesday and ends on the second Tuesday following, there are 11 working days in that half-month. The employee's basic rate would then be computed by dividing the \$154 salary by 11 working days of 8 hours each, or 88 hours. The basic rate in this situation would therefore be \$1.75 an hour. The basic rate would remain the same regardless of the fact that the employee did not actually work 11 days of 8 hours each because of the occurrence of a holiday, or because the employee took a day off, or because he worked longer than 8 hours on some days during the period, or because he worked fewer than 8 hours on some days, or because he worked more than 11 days. In any of these circumstances the employee's basic rate would still be \$1.75 an

⁵ See § 548.304.

⁶ See §§ 778.200 through 778.225 of this chapter for further discussion of what payments may be excluded.

⁷ The legal minimum is the highest rate required by the Fair Labor Standards Act or other Federal, State or local law.

⁸ See § 778.113 of this chapter.