

§ 778.224

under section 7(e)(2). The payment must therefore be included in the employee's regular rate in the same manner as any payment for services, such as an attendance bonus, which is not related to any specific hours of work.

[46 FR 7313, Jan. 23, 1981]

§ 778.224 "Other similar payments".

(a) *General.* The preceding sections have enumerated and discussed the basic types of payments for which exclusion from the regular rate is specifically provided under section 7(e)(2) because they are not made as compensation for hours of work. Section 7(e)(2) also authorizes exclusion from the regular rate of "other similar payments to an employee which are not made as compensation for his hours of employment." Since a variety of miscellaneous payments are paid by an employer to an employee under peculiar circumstances, it was not considered feasible to attempt to list them. They must, however, be "similar" in character to the payments specifically described in section 7(e)(2). It is clear that the clause was not intended to permit the exclusion from the regular rate of payments such as bonuses or the furnishing of facilities like board and lodging which, though not directly attributable to any particular hours of work are, nevertheless, clearly understood to be compensation for services.

(b) *Examples of other excludable payments.* A few examples may serve to illustrate some of the types of payments intended to be excluded as "other similar payments":

(1) Sums paid to an employee for the rental of his truck or car.

(2) Loans or advances made by the employer to the employee.

(3) The cost to the employer of conveniences furnished to the employee such as parking space, restrooms, lockers, on-the-job medical care and recreational facilities.

TALENT FEES IN THE RADIO AND TELEVISION INDUSTRY

§ 778.225 Talent fees excludable under regulations.

Section 7(e)(3) provides for the exclusion from the regular rate of "talent fees (as such talent fees are defined and

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delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs." Regulations defining "talent fees" have been issued as part 550 of this chapter. Payments which accord with this definition are excluded from the regular rate.

Subpart D—Special Problems

INTRODUCTORY

§ 778.300 Scope of subpart.

This subpart applies the principles of computing overtime to some of the problems that arise frequently.

CHANGE IN THE BEGINNING OF THE WORKWEEK

§ 778.301 Overlapping when change of workweek is made.

As stated in § 778.105, the beginning of the workweek may be changed for an employee or for a group of employees if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. A change in the workweek necessarily results in a situation in which one or more hours or days fall in both the "old" workweek as previously constituted and the "new" workweek. Thus, if the workweek in the plant commenced at 7 a.m. on Monday and it is now proposed to begin the workweek at 7 a.m. on Sunday, the hours worked from 7 a.m. Sunday to 7 a.m. Monday will constitute both the last hours of the old workweek and the first hours of the newly established workweek.

§ 778.302 Computation of overtime due for overlapping workweeks.

(a) *General rule.* When the beginning of the workweek is changed, if the hours which fall within both "old" and "new" workweeks as explained in § 778.301 are hours in which the employee does no work, his statutory compensation for each workweek is, of course, determinable in precisely the same manner as it would be if no overlap existed. If, on the other hand, some of the employee's working time falls within hours which are included in both workweeks, the Department of Labor, as an enforcement policy, will