

§ 783.46

cash wages which are less than the applicable minimum wage rate for each hour actually on duty during the period covered by the wage payments. Such considerations are to be based upon the principles and interpretations governing such deductions. These are set forth and discussed in part 531 of this chapter. The methods of paying the compensation required by section 6 and the application thereto of the provisions of section 3(m) of the Act, which are set forth and explained in the said part 531, are applicable to seamen subject to the minimum wage provisions of the Act.

§ 783.46 Hours worked.

The provisions of section 6(b)(2) of the Act require that a seaman employed on an American vessel be paid wages equal to compensation at not less than the prescribed minimum wage rate for all of the hours the employee "was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement)". The Act in this portion of section 6(b)(2) is reflecting concepts that are well established in the law, and existing precedents (in such cases as *Armour & Co. v. Wantock*, 323 U.S. 126; *Skidmore v. Swift & Co.*, 323 U.S. 134; *Steiner v. Mitchell*, 350 U.S. 247; *Mitchell v. King Packing Co.*, 350 U.S. 260; *Tennessee Coal, Iron & R. Co. v. Muscoda Local N. 123*, 321 U.S. 590; and *General Electric Co. v. Porter*, 208 F. 2d 805, certiorari denied, 347 U.S. 951, 975) would be applicable in determining what time constitutes hours worked. See also the general discussion of hours worked in part 785 of this chapter.

§ 783.47 Off-duty periods.

Off-duty periods include not only such periods as shore leave but also generally those hours spent by a seaman on the vessel outside his watch or normal or regular working hours and his standby periods during which hours he is not required to perform and does not perform work of any kind but is free to utilize his time for his own purpose. The fact that during such off-

29 CFR Ch. V (7-1-10 Edition)

duty periods the employee is subject to call in case of emergency situations affecting the safety and welfare of the vessel upon which he is employed, or of its passengers, crew, or cargo or for participation in life boat or fire drills will not render such off-duty periods, excluded by employment agreement applicable to the employee, "hours worked". Responding to such calls, however, as well as the performance of work in response thereto constitute compensable work time. For further and more detailed discussion on what generally are regarded as "hours worked" under the Act, see part 785 of this chapter.

APPLICATION OF THE EXEMPTIONS

§ 783.48 Factors determining application of exemptions.

The application of the exemptions provided by section 13(a)(14) and section 13(b)(6) of the Act is determined in accordance with their language and scope as explained in §§ 783.24, 783.25, and 783.27, with regard to the principles set forth in § 783.20 and the legislative history and judicial construction outlined in §§ 783.28 through 783.30. Whether a particular employee is exempt depends on what he does, as explained in §§ 783.31 through 783.37. Whether he is exempt from the overtime pay provisions only or from minimum wages as well depends on whether his employment is or is not on an American vessel, which is determined as indicated in §§ 783.38 through 783.42. In addition, sections 13(a)(14) and 13(b)(6), like other exemptions in the Act, apply on a workweek basis as mentioned in § 783.43 and explained in §§ 783.49 and 783.50.

§ 783.49 Workweek unit in applying the exemptions.

The unit of time to be used in determining the application of the exemption provided by section 13(b)(6) or 13(a)(14) to an employee is the workweek. (See *Overnight Transportation Co. v. Missel*, 316 U.S. 572; *Sternberg Dredging Co. v. Walling*, 158 F. 2d 678.) This is the period used in determining whether a substantial amount of non-seaman's work has been performed so as to make the exemption inapplicable. See