

§ 778.600

40. The hourly rate purportedly paid under such a scheme is artificially low, and the difference between the wages paid at the hourly rate and the fixed weekly compensation is labeled a percentage of wage "bonus."

Example: An employer's wage records show an hourly rate of \$5.62 per hour, and an overtime rate of one and one-half times that amount, or \$8.43 per hour. In addition, the employer pays an alleged percentage of wage bonus on which no additional overtime compensation is paid:

Week 1—40 hours worked:	
40 hours at \$5.62 per hour	\$224.80
Percentage of total earnings bonus at 33.45% of \$224.80	75.20
Total	300.00
Week 2—43 hours worked:	
40 hours at \$5.62 per hour	224.80
3 hours at \$8.43 per hour	25.29
Subtotal	250.09
Percentage of total earnings bonus at 19.96% of \$250.09	49.91
Total	300.00
Week 3—48 hours worked:	
40 hours at \$5.62 per hour	224.80
8 hours at \$8.43 per hour	67.44
Subtotal	292.24
Percentage of total earnings bonus at 2.66% of \$292.24	7.76
Total	300.00

This employee is in fact being paid no overtime compensation at all. The records in fact reveal that the employer pays exactly \$300 per week, no matter how many hours the employee works. The employee's regular rate is \$300 divided by the number of hours worked in the particular week, and his overtime compensation due must be computed as shown in § 778.114.

[46 FR 7319, Jan. 23, 1981]

Subpart G—Miscellaneous

§ 778.600 Veterans' subsistence allowances.

Subsistence allowances paid under Public Law 346 (commonly known as the G.I. bill of rights) to a veteran employed in on-the-job training program work may not be used to offset the wages to which he is entitled under the Fair Labor Standards Act. The subsistence allowances provided by Public Law 346 for payment to veterans are not paid as compensation for services rendered to an employer nor are they

intended as subsidy payments for such employer. In order to qualify as wages under either section 6 or section 7 of the Act, sums paid to an employee must be paid by or on behalf of the employer. Since veterans' subsistence allowances are not so paid, they may not be used to make up the minimum wage or overtime pay requirements of the Act nor are they included in the regular rate of pay under section 7.

§ 778.601 Special overtime provisions available for hospital and residential care establishments under section 7(j).

(a) *The statutory provision.* Section 7(j) of the Act provides, for hospital and residential care establishment employment, under prescribed conditions, an exemption from the general requirement of section 7(a) that overtime compensation be computed on a workweek basis. It permits a 14-day period to be established for the purpose of computing overtime compensation by an agreement or understanding between an employer engaged in the operation of a hospital or residential care establishment, and any of his employees employed in connection therewith. The exemption provided by section 7(j) applies:

if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for purposes of overtime computation and if, for his employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(b) *Conditions for application of exemption.* As conditions for use of the 14-day period in lieu of the workweek in computing overtime, section 7(j) requires, first, an agreement or understanding between the employer and the employee before performance of the work that such period is to be used, and second, the payment to the employee of overtime compensation at a rate not less than one and one-half times his regular rate for all hours worked in excess of eight in any workday within such period and in excess of 80 during the period as a whole.