

## Wage and Hour Division, Labor

## § 548.301

(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.<sup>3</sup>

(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.<sup>4</sup> Thus, a method rather than a specific rate is authorized. Also,

<sup>3</sup>The 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.

<sup>4</sup>See § 548.302.

under certain conditions, the cost of a single meal a day furnished to employees may be excluded from the computation of overtime pay.<sup>5</sup> 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)<sup>6</sup> and the established basic rate used to compute overtime pay may not be less than the legal minimum.<sup>7</sup>

[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

<sup>5</sup>See § 548.304.

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

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