

**§ 778.221 “Call-back” pay.**

(a) *General.* In the interest of simplicity and uniformity, the principles discussed in § 778.220 are applied also with respect to typical minimum “call-back” or “call-out” payments made pursuant to employment agreements. Typically, such minimum payments consist of a specified number of hours’ pay at the applicable straight time or overtime rates which an employee receives on infrequent and sporadic occasions when, after his scheduled hours of work have ended and without prearrangement, he responds to a call from his employer to perform extra work.

(b) *Application illustrated.* The application of these principles to call-back payments may be illustrated as follows: An employment agreement provides a minimum of 3 hours’ pay at time and one-half for any employee called back to work outside his scheduled hours. The employees covered by the agreement, who are entitled to overtime pay after 40 hours a week, normally work 8 hours each day, Monday through Friday, inclusive, in a workweek beginning on Monday, and are paid overtime compensation at time and one-half for all hours worked in excess of 8 in any day or 40 in any workweek. Assume that an employee covered by this agreement and paid at the rate of \$5 an hour works 1 hour overtime or a total of 9 hours on Monday, and works 8 hours each on Tuesday through Friday, inclusive. After he has gone home on Friday evening he is called back to perform an emergency job. His hours worked on the call total 2 hours and he receives 3 hours’ pay at time and one-half, or \$22.50, under the call-back provision, in addition to \$200 for working his regular schedule and \$7.50 for overtime worked on Monday evening. In computing overtime compensation due this employee under the Act, the 43 actual hours (not 44) are counted as working time during the week. In addition to \$215 pay at the \$5 rate for all these hours, he has received under the agreement a premium of \$2.50 for the 1 overtime hour on Monday and of \$5 for the 2 hours of overtime work on the call, plus an extra sum of \$7.50 paid by reason of the provision for minimum call-back pay. For

purposes of the Act, the extra premiums paid for actual hours of overtime work on Monday and on the Friday call (a total of \$7.50) may be excluded as true overtime premiums in computing his regular rate for the week and may be credited toward compensation due under the Act, but the extra \$7.50 received under the call-back provision is not regarded as paid for hours worked; therefore, it may be excluded from the regular rate, but it cannot be credited toward overtime compensation due under the Act. The regular rate of the employee, therefore, remains \$5, and he has received an overtime premium of \$2.50 an hour for 3 overtime hours of work. This satisfies the requirements of section 7 of the Act. The same would be true, of course, if in the foregoing example, the employee was called back outside his scheduled hours for the 2-hour emergency job on another night of the week or on Saturday or Sunday, instead of on Friday night.

[33 FR 986, Jan. 26, 1968, as amended at 46 FR 7313, Jan. 23, 1981]

**§ 778.222 Other payments similar to “call-back” pay.**

The principles discussed in §§ 778.220 and 778.221 are also applied with respect to certain types of extra payments which are similar to call-back pay, such as: (a) Extra payments made to employees, on infrequent and sporadic occasions, for failure to give the employee sufficient notice to report for work on regular days of rest or during hours outside of his regular work schedule; and (b) extra payments made, on infrequent and sporadic occasions, solely because the employee has been called back to work before the expiration of a specified number of hours between shifts or tours of duty, sometimes referred to as a “rest period.” The extra payment, over and above the employee’s earnings for the hours actually worked at his applicable rate (straight time or overtime, as the case may be), is considered as a payment that is not made for hours worked.

**§ 778.223 Pay for non-productive hours distinguished.**

Under the Act an employee must be compensated for all hours worked. As a