

FLSA-235

November 18, 1966

You ask whether the Department considers a truck driver as being off duty while sleeping aboard a truck in motion on sleeper equipment provided by the employer. As indicated in Section 785.22 of the enclosed bulletin on Hours Worked, bona fide sleeping periods may be excluded from hours worked where truck drivers and helpers are on trips away from home for a period of 24 hours or more provided adequate sleeping facilities are furnished by the employer. The bona fide sleeping period is limited to a maximum of 8 hours in computing hours worked. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. Unless the employee can get at least 5 hours of sleep during the scheduled sleeping period, the entire time must be counted as working time. If the trip is less than 24 hours, all time on duty on the truck is hours worked even though some of the time is spent in the sleeping berth.

It is our opinion that payment of overtime at the rate applicable to the work being performed during overtime hours under a schedule under which the rate decreases as the hours of work increase would not comply with section 7 of the Act.

The "regular rate" as used in section 7(s) of the Act is the hourly rate actually paid an employee for the non-overtime work week for which he is employed. In the factual situation posed, it is determined by dividing all remuneration paid the employee for the normal, non-overtime workweek by the number of hours worked for which such remuneration was paid. (See sections 778.107 - 778.115 incl. of enclosed Bulletin) An exception to the requirement of overtime at not less than one and one-half times the regular rate is payment under an agreed plan meeting the requirements of 7(f)(1) and 7(f)(2). (See section 778.415 et seq.)

I hope the foregoing sufficiently answers your questions.

Sincerely yours,

Administrator

Enclosures