

## FLSA-783

June 2, 1967

This is in response to your letter with respect to the legality of a proposed wage plan for your clients who are engaged in the seasonal business of repairing oil burners.

The proposed plan would permit your clients to pay their employees on an hourly basis for a consecutive 7 months period a year, i.e. September 1 to April 1, and then to pay the employees on a weekly salary basis for the remainder of the year. The regular hourly rate during both seasons would not be below the statutory minimum and overtime during both periods would be paid at 1½ times the regular hourly rate after 40 hours. In this regard you state: "Overtime during the remainder of the year, wherein the employees are on a weekly salary, would be computed on the basis of total hours worked divided into weekly wage scale, giving an hourly rate, ... We further understand that we may change from one method of payment to the other each year so that in effect an employee would be paid an hourly wage for part of the year, and a weekly salary for the balance of the year." You state that the purpose behind the plan is to be able to retain key employees during the slack season who because of non-overtime work during that slack season would have to leave because of insufficient pay.

There is nothing in the Act which prohibits an employer from paying his employees a different rate of pay during the busy season than in the slack season provided each rate is agreed upon and specified in advance, is in effect for a substantial period of time and is a bona fide rate i.e., the actual basis of straight time and overtime compensation. Your letter indicates that under the proposed plan a specified hourly rate will be in effect for 7 months each year and during the remaining 5 months of the year the employees will be paid at a rate determined by dividing the specified weekly salary by the total hours worked. We assume that your client's agreement with their employees will specify the hourly rates and salaries and how the hourly rate is to be computed when the employees are on a salary basis. If the employees are in effect paid for all hours worked on the basis of these rates, with time and one-half for all hours in excess of 40, the overtime requirements of the Act would be met.

Sincerely Yours,

Clarence T. Lundquist  
Administrator