

FLSA-1055

May 24, 1988

This is in further response to your letter in which you request an opinion concerning the application of section 7(i) of the Fair Labor Standards Act (FLSA) to mechanics employed in automotive repair establishments which qualify as retail establishments under FLSA. We regret the delay in responding to your inquiry.

The Wage and Hour Division of the Department of Labor administers FLSA, the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

Section 7(i) of FLSA provides an exemption from its overtime pay requirements, but not minimum wage provisions, for any employee of a retail or service establishment, if (1) the regular rate of pay of such employee is in excess of one and one-half times the applicable minimum hourly rate, and (2) more than half of his/her compensation for a representative period (not less than one month) represents commissions on goods or services.

You indicate that the position of mechanics will be compensated on the basis of a time standard called "flag time" for each service job performed. The "flag time" may be more or less than the actual clock time. Each mechanic will receive an assigned "flag rate" per hour which is based upon the mechanic's level of skill and the geographic location of the establishment. At the end of each workweek, "flag time" hours will be multiplied by the "flag rate" to determine wages earned. You consider these wages to be commissions under FLSA.

You also advise that the results of a pilot program indicate that the vast majority of mechanics will receive in excess of \$5.03 per clock hour each workweek under this method of compensation. Further, that the exemption will not be claimed in any workweek when this condition is not met and time and one-half the regular rate of pay for actual hours worked in excess of 40 will be paid. It is our opinion that the pay plan described in your letter meets the requirements of section 7(i) of FLSA.

We hope this response satisfactorily to your inquiry. However, if you have any further questions on this matter, please do not hesitate to let us know.

Sincerely,

Paula V. Smith
Administrator