


FLSA-777

September 6, 1988

This is in response to your letter concerning the application of the overtime pay provision of the Fair Labor Standards Act (FLSA). You are specifically concerned with the proper method of computing overtime premium pay on cost of living (COLA) payments. Your office represents ***. That union has a collective bargaining agreement with Company which contains a provision for a wage adjustment comprised of two separate payments, a percentage increase of 2% and a single COLA payment. has agreed to include the COLA in the regular rate for overtime pay, but a problem has arisen about the correct computation method. We regret the delay in responding to your inquiry.

 The Wage and Hour Division or 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 or \$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. The FLSA is discussed in more detail in the enclosed "Handy Reference Guide to the Fair Labor Standards Act."

You use as an example "a 'typical' splicer with a regular hourly rate of \$16.4625 who works 48 hours in a week, Monday through Saturday, 8 hours a day, and whose single payment weekly COLA adjustment is \$6.45496." You describe both the union's and the employer's method of computing overtime pay and ask which one is correct.

A. computes the employee's pay for the week as \$857.97 as follows:

1. Regular Hours 40
2. Hourly Rate 16.4625
3. COLA Adjustment (Weekly) 6.45
4. COLA Adjustment (Hourly)
(6.45 divided by 40) .16
5. Hourly Rate Included COLA
Adjustment (2 + 4) 16.6225
6. 40 Hour Straight Time Pay
(1 x 2) \$658.50
7. 8 Hours Overtime Pay
(1.5 x 8 x \$16.6225) \$199.47
8. Gross Pay (6 + 7) \$857.97

B. The employer computes the employee's pay for the week as \$856.59 as follows:

1. Regular Hours 40
2. Overtime Hours 8
3. Straight Time 48
4. Hourly Rate 16.4625
- 5 Straight Pay \$790.20
6. COLA Adjustment (Weekly) 6.45
7. Adjusted Base Pay \$790.65
8. Premium Hourly Rate* 16.59697
(*7 divided by 3)
9. Premium Hours 4
10. Premium Pay (8 x 9) 66.39
11. Gross Pay (5 ÷ 10) \$856.59


You note that the single payment weekly adjustment (\$6.45) is applied only to 4 premium hours by the employer's method. However, instead of dividing the new regular rate in half and multiplying that amount by the number of overtime hours, in this example the employer is dividing overtime hours in half and multiplying that number by the full regular rate.

The difference in overtime pay in the two examples result from the different methods of prorating the \$6.45 COLA into the regular rate. The union divided the COLA by 40, while the employer divided the COLA by 48. Overtime is based on the employee's regular rate of pay. The regular rate is determined by dividing all income (except for statutory exclusions) by total hours worked, not just by 40 hours. The employer's computation, which includes all hours worked in the week (48) rather than just the first 40 hours, is correct.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator

 Minimum wage has been increased by later amendments to the Act.