



Commonwealth of Puerto Rico
DEPARTMENT OF LABOR AND HUMAN RESOURCES

May 4, 1998

Re: Inquiry No. 14488

This is to reference to your inquiry pertaining to the proper method of computing overtime compensation under the terms of a collective bargaining agreement that requires both premium pay for nonovertime hours worked on Sundays and a shift differential for night work. You indicate that the relevant provision of the CBA states that "time worked on a Sunday during the regularly schedule tour as a part of a normal work week shall be compensated at one and one-half (1½) times the hourly basic wage rate". The agreement also provides that employees who work the night shift will receive additional compensation of \$10.00 per shift.

Your letter includes the following detailed example for a hypothetical workweek in which you worked a total of 44 hours, including 4 overtime hours on Sunday:

For example, if my hourly basic wage rate is \$10.00 per hour and I am scheduled to work Sunday, Monday, Tuesday, Wednesday and Thursday on the the night shift for 8 hours each tour, and if I work my scheduled 40 hours and also work 4 hours overtime on Sunday, I understand that I should be paid as follows:

$\$10.00 \times 8$ regular hours $\times 1 \frac{1}{2}$	=	\$ 120.00	Sunday pay for a regularly scheduled tour
$\$10.00 \times 8$ regular hours	=	80.00	Monday pay
$\$10.00 \times 8$ regular hours	=	80.00	Tuesday pay
$\$10.00 \times 8$ regular hours	=	80.00	Wednesday pay
$\$10.00 \times 8$ regular hours	=	80.00	Thursday pay
$\$10.00 \times 5$ night tour	=	50.00	night tour
		<u>\$490.00</u>	total pay for 40 hours worked

$\frac{\$490.00}{40} = \12.25 total hourly wage for this week

Therefore:

$\$12.25 \times 4$ overtime hours $\times 2 = \$98.00$ overtime pay
 $\$490.00 + \$98.00 = \$588.00$ gross pay for this week.

In this the right way to calculate the pay? If not, you explain to me how it should be calculated and why?

Payment of overtime is require under both Act No. 379 of May 15, 1948, as amended, and under the Fair Labor Standards Act (FLSA). Section 7 of the FLSA requires overtime compensation for all hours over 40 per week at not less than one and one-half (1 ½) times he regular rate, but not for hours in excess of the daily 8- hours standard. Act No. 379, on the other hand, requires overtime compensation at a double time for hour in excess of both 8 hours per day and 40 hours per week. It is a recognized principle in labor law that when different statutes apply, the employees is entitled to the higher benefit. The overtime provisions of the FLSA are thus preempted by the higher benefits required under Act No. 379.

As a limited exception to the above rule, Act. No. 379 allows firms covered by the FLSA to compensate hours in excess of 8 per day at time and one-half (1½), instead of double time, provided the employee does not work in excess of 40 hours during that particular week. This provisions thus only comes into play in weeks in which the employee exceeds 8 hours on one more days, but because of a short workweek, does not exceed the 40 hour limit. There is no exception to the rule that all hours over 40 must be paid at double time, unless the employee is exempt for overtime.

Neither the FLSA nor Act No. 379 require overtime compensation for hours worked on Sunday, unless the hour worked on that Sunday are in excess of the daily or weekly standard, does either act require shift differentials. The official interpretations on FLSA overtime provisions are contained in Regulations, Part 778, Title 29 of the Code of Federal Regulations. This Department also relies on on the Part 778 for guidance in interpreting the overtime provisions of Act. 379, except to the extent that the Puerto Rico statute provides higher benefits.

The key issue must be resolved in this case is whether the premium required by the CBA for Sunday work may be included in the regular rate for purposes of computing the overtime compensation to which you are entitled. That issue is addressed at § 778.200 of the Federal regulations, "Provisions governing inclusion, exclusion and crediting of particular payments". Because the applicable regulations are too lengthy to quote in full here, we are instead including copy of the regulations for your information. Briefly, § 778.201 (a) provides that "[c]ertain premium payments made by employers for work... on certain special days are regarded as overtime premiums". In such cases, the additional compensation provided by the premium rates not only need not be included in the employee's regular rate of pay for the purpose of computing overtime compensation, but in fact may be credited toward the overtime compensation required by the Act.

On the basis of the limited information provided, the premium payment required under the CBA appears to qualify as an overtime premium and thus may be excluded from the regular rate for purposes of computing the overtime compensation. That premium would thus also qualify for credit toward the overtime payments required by both the FLSA and Act No. 379. Therefore, the proper method for computing the overtime due is to exclude the extra half-time for Sunday work from the regular rate after computing the overtime due to credit said half-time against the total due.

In the specific example you submitted, the half time payment for Sunday work is equivalent to \$40.00, which should be excluded from the regular rate before computing the overtime compensation. The night shift differential, on the other hand, must be included in the regular rate, as provided at § 778.207 (b). The \$10.00 shift differential for an 8 hour tour represents an additional \$1.25 per hour, which in effect raises the nominal regular rate from \$10.00 to \$11.25. In this particular case, the employee is entitled to 40 hours at \$11.25, or \$450.00 for this hypothetical workweek. The 4 overtime hours on Sunday must be paid at \$22.50 (11.25×2), or \$90.00. The total compensation for this week, including overtime, is therefore \$540.00, including the \$40.00 Sunday premium.

We trust the foregoing is responsive to your inquiry.

Cordially,



Edwin Hernandez Rodriguez
Acting Solicitor of Labor

Enclosure