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## 29 C.F.R. § 778.202

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### Premium pay for hours in excess of a daily or weekly standard.

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(a) *Hours in excess of 8 per day or statutory weekly standard.* A written or unwritten employment contract, agreement, understanding, handbook, policy, or practice may provide for the payment of overtime compensation for hours worked in excess of 8 per day or 40 per week. If the payment of such overtime compensation is in fact contingent upon the employee's having worked in excess of 8 hours in a day or in excess of the number of hours in the workweek specified in section 7(a) of the Act as the weekly maximum and such hours are reflected in an agreement or by established practice, the extra premium compensation paid for the excess hours is excludable from the regular rate under section 7(e)(5) of the Act and may be credited toward statutory overtime payments pursuant to section 7(h) of the Act. In applying the rules in this paragraph (a) to situations where it is the custom to pay employees for hours during which no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, as these terms are explained in §§ 778.216 through 778.224, it is permissible (but not required) to count these hours as hours worked in determining the amount of overtime premium pay, due for hours in excess of 8 per day or the applicable maximum hours standard, which may be excluded from the regular rate and credited toward the statutory overtime compensation.

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