29 C.F.R. § 778.221

“Call-back” pay.

(a) *General.* Typically, “call-back” or “call-out” payments are made pursuant to agreement or established practice and consist of a specified number of hours' pay at the applicable straight time or overtime rates received by an employee on occasions when, after his scheduled hours of work have ended and without prearrangement, he responds to a call from his employer to perform extra work. The amount by which the specified number of hours' pay exceeds the compensation for hours actually worked is considered as a payment that is not made for hours worked. As such, it may be excluded from the computation of the employee's regular rate and cannot be credited toward statutory overtime compensation due the employee. Payments that are prearranged, however, may not be excluded from the regular rate. For example, if an employer retailer called in an employee to help clean up the store for 3 hours after an unexpected roof leak, and then again 3 weeks later for 2 hours to cover for a coworker who left work for a family emergency, payments for those instances would be without prearrangement and any call-back pay that exceeded the amount the employee would receive for the hours worked would be excludable. However, when payments under §§ 778.221 and 778.222 are prearranged, they are compensation for work. The key inquiry for determining prearrangement is whether the extra work was anticipated and therefore reasonably could have been scheduled. For example, if an employer restaurant anticipates needing extra servers for two hours during the busiest part of each Saturday evening and calls in employees to meet that need instead of scheduling additional servers, that would be prearrangement and any call-back pay would be included in the regular rate.