

29 C.F.R. § 778.329

Alternating workweeks of different fixed lengths.

In some cases an employee is hired on a salary basis with the understanding that his weekly salary is intended to cover the fixed schedule of hours (and no more) and that this fixed schedule provides for alternating workweeks of different fixed lengths. For example, many offices operate with half staff on Saturdays and, in consequence, employees are hired at a fixed salary covering a fixed working schedule of 7 hours a day Monday through Friday and 5 hours on alternate Saturdays. The parties agree that extra compensation is to be paid for all hours worked in excess of the schedule in either week at the base rate for hours between 35 and 40 in the short week and at time and one-half such rate for hours in excess of 40 in all weeks. Such an arrangement results in the employee's working at two different rates of pay—one thirty-fifth of the salary in short workweeks and one-fourtieth of the salary in the longer weeks. If the provisions of such a contract are followed, if the nonovertime hours are compensated in full at the applicable regular rate in each week and overtime compensation is properly computed for hours in excess of 40 at time and one-half the rate applicable in the particular workweek, the overtime requirements of the Fair Labor Standards Act will be met. While this situation bears some resemblance to the one discussed in § 778.327 there is this significant difference; the arrangement is permanent, the length of the respective workweeks and the rates for such weeks are fixed on a permanent-schedule basis far in advance and are therefore not subject to the control of the employer and do not vary with the fluctuations in business. In an arrangement of this kind, if the employer required the employee to work on Saturday in a week in which he was scheduled for work only on the Monday through Friday schedule, he would be paid at his regular rate for all the Saturday hours in addition to his salary.

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