
29 C.F.R. § 778.403

Constant pay for varying workweeks including overtime is not permitted except as specified in section 7(f).

Section 7(f) is the only provision of the Act which allows an employer to pay the same total compensation each week to an employee who works overtime and whose hours of work vary from week to week. (See in this connection the discussion in §§ 778.207, 778.321–778.329, and 778.308–778.315.) Unless the pay arrangements in a particular situation meet the requirements of section 7(f) as set forth, all the compensation received by the employee under a guaranteed pay plan is included in his regular rate and no part of such guaranteed pay may be credited toward overtime compensation due under the Act. Section 7(f) is an exemption from the overtime provisions of the Act. No employer will be exempt from the duty of computing overtime compensation for an employee under section 7(a) unless the employee is paid pursuant to a plan which actually meets all the requirements of the exemption. These requirements will be discussed separately in the ensuing sections.

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