
29 C.F.R. § 778.408

The specified regular rate.

(a) To qualify under section 7(f), the contract must specify “a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 6 (whichever may be applicable).” The word “regular” describing the rate in this provision is not to be treated as surplusage. To understand the nature of this requirement it is important to consider the past history of this type of agreement in the courts. In both of the two cases before it, the Supreme Court found that the relationship between the hourly rate specified in the contract and the amount guaranteed was such that the employee in a substantial portion of the workweeks of the period examined by the court worked sufficient hours to earn in excess of the guaranteed amount and in those workweeks was paid at the specified hourly rate for the first 40 hours and at time and one-half such rate for hours in excess of 40 (*Walling v. A. H. Belo Company*, 316 U.S. 624, and *Walling v. Halliburton Oil Well Cementing Company*, 331 U.S.17). The fact that section 7(f) requires that a contract, to qualify an employee for exemption under section 7(f), must specify a “regular rate,” indicates that this criterion of these two cases is still important.

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