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## 29 C.F.R. § 778.500

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### Artificial regular rates.

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- (a) Since the term *regular rate* is defined to include all remuneration for employment (except statutory exclusions) whether derived from hourly rates, piece rates, production bonuses or other sources, the overtime provisions of the act cannot be avoided by setting an artificially low hourly rate upon which overtime pay is to be based and making up the additional compensation due to employees by other means. The established hourly rate is the “regular rate” to an employee only if the hourly earnings are the sole source of his compensation. Payment for overtime on the basis of an artificial “regular” rate will not result in compliance with the overtime provisions of the Act.
- (b) It may be helpful to describe a few schemes that have been attempted and to indicate the pitfalls inherent in the adoption of such schemes. The device of the varying rate which decreases as the length of the workweek increases has already been discussed in §§ 778.321 through 778.329. It might be well, however, to re-emphasize that the hourly rate paid for the identical work during the hours in excess of the applicable maximum hours standard cannot be lower than the rate paid for the nonovertime hours nor can the hourly rate vary from week to week inversely with the length of the workweek. It has been pointed out that, except in limited situations under contracts which qualify under section 7(f), it is not possible for an employer lawfully to agree with his employees that they will receive the same total sum, comprising both straight time and overtime compensation, in all weeks without regard to the number of overtime hours (if any) worked in any workweek. The result cannot be achieved by the payment of a fixed salary or by the payment of a lump sum for overtime or by any other method or device.

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