
29 C.F.R. § 779.416

What compensation “represents commissions.”

(a) Employment arrangements which provide for a commission on goods or services to be paid to an employee of a retail or service establishment may also provide, as indicated in § 779.413, for the payment to the employee at a regular pay period of a fixed sum of money, which may bear a more or less fixed relationship to the commission earnings which could be expected, on the basis of experience, for an average period of the same length. Such periodic payments, which are variously described in retail or service establishments as “advances,” “draws,” or “guarantees,” are keyed to a time base and are usually paid at weekly or other fixed intervals which may in some instances be different from and more frequent than, the intervals for payment of any earnings computed exclusively on a commission basis. They are normally smaller in amount than the commission earnings expected for such a period and if they prove to be greater, a deduction of the excess amount from commission earnings for a subsequent period, if otherwise lawful, may or may not be customary under the employment arrangement. A determination of whether or to what extent such periodic payments can be considered to represent commissions may be required in those situations where the employment arrangement is that the employee will be paid the stipulated sum, or the commission earnings allocable to the same period, whichever is the greater amount. The stipulated sum can never represent commissions, of course, if it is actually paid as a salary. If, however, it appears from all the facts and circumstances of the employment that the stipulated sum is not so paid and that it actually functions as an integral part of a true commission basis of payment, then such compensation may qualify as compensation which “represents commissions on goods or services” within the meaning of clause (2) of the section 7(i) exemption.

This document is only available to subscribers. Please [log in](#) or [purchase access](#).

[Purchase Login](#)