
29 C.F.R. § 794.142

Special compensation when overtime in excess of 12 daily or 56 weekly hours is worked in the workweek.

- (a) As noted in § 794.141, the partial exemption provided by section 7(b)(3) from the requirement that overtime hours be paid for at not less than one and one-half times the employee's regular rate applies only to "employment up to 12 hours in any workday and up to 56 hours in any workweek." The statute makes it plain that in any workweek when an employee otherwise eligible for the exemption works more than the specified daily or weekly hours the exemption applies only "if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed." Failure of the employer to pay overtime compensation under these special standards defeat the exemption. (See *Wirtz v. Osceola Farms Co.*, 372 F. 2d 584 (C.A. 5); *Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 298 (C.A. 9).)
- (b) Under this provision, the number of hours worked in the workweek which are in excess of 12 in any workday or workdays therein, or the number in excess of 56 in the week, whichever is the greater number, must be compensated as provided in section 7(b)(3). Thus, the requisite time-and-one-half compensation must be paid for all daily overtime hours in excess of 12 per day worked by an employee in a workweek when his hours worked do not exceed 56 in the week; and for all weekly overtime hours in excess of 56 which he works in a workweek when he does not work more than 12 hours in any day. When an employee works in excess of both the daily and weekly maximum hours standards in any workweek for which the exemption is claimed, he must be paid at such overtime rate for all hours worked in the workweek in excess of the applicable daily maximum or in excess of the applicable weekly maximum, whichever number of hours is greater. Thus, if his total hours of work in the workweek which are in excess of the daily maximum are 10 and his hours in excess of the weekly maximum are 8, overtime compensation is required for 10 hours, not 18. As an example, suppose an employee employed at an hourly rate of \$2.40 is employed under the other conditions specified for exemption under section 7(b)(3) and works the following schedule:

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