similar reasons, so as to be $7.50 an 
hour during the hours established as 
the basic or normal or regular workday 
or workweek, and a premium rate of 
$11.25 an hour is paid for the same work 
performed during other hours of the 
day or week, the extra $3.75 may be ex-
cluded from the regular rate of pay and 
may be credited toward overtime pay 
due under the Act. Similar principles 
are applicable to agreements fol-
lowing this general pattern exist in 
other industries.

(46 FR 7311, Jan. 23, 1981)

§ 778.207 Other types of contract pre-
mium pay distinguished.

(a) Overtime premiums are those defined 
by the statute. The various types of contract 
premium rates which provide extra compensation qualifying as over-
time premiums to be excluded from the regular rate (under section 7(e) (5), (6), 
and (7) and credited toward statutory overtime pay requirements (under section 7(h)) have been described in §§778.201 through 778.206. The plain 
wording of the statute makes it clear 
that extra compensation provided by 
premium rates other than those de-
scribed cannot be treated as overtime premiums. Wherever such other pre-
miums are paid, they must be included in the employee’s regular rate before 
statutory overtime compensation is 
computed; no part of such premiums 
may be credited toward statutory over-
time pay.

(b) Nonovertime premiums. The Act re-
quires the inclusion in the regular rate 
of such extra premiums as nightshift 
differentials (whether they take the 
form of a percent of the base rate or an 
addition of so many cents per hour) and premiums paid for hazardous, ardu-
ous or dirty work. It also requires in-
clusion of any extra compensation 
which is paid as an incentive for the 
rapid performance of work, and since 
any extra compensation in order to 
qualify as an overtime premium must 
be provided by a premium rate per 
hour, except in the special case of 
pieceworkers as discussed in §778.418, 
lump sum premiums which are paid 
without regard to the number of hours 
worked are not overtime premiums and 
must be included in the regular rate. 
For example, where an employer pays 8 
hours’ pay for a particular job whether 
it is performed in 8 hours or in less 
time, the extra premium of 2 hours’ 
pay received by an employee who com-
pletes the job in 6 hours must be in-
cluded in his regular rate. Similarly, 
where an employer pays for 8 hours at 
minimum rates for a job performed dur-
ing the overtime hours whether it is 
completed in 8 hours or less, no part of 
the premium paid qualifies as overtime 
premium under sections 7(e) (5), (6), or 
(7). (For a further discussion of this 
and related problems, see §§778.308 to 
778.314.)

§ 778.208 Inclusion and exclusion of 
bonuses in computing the "regular 
rate."

Section 7(e) of the Act requires the 
inclusion in the regular rate of all re-
muneration for employment except 
seven specified types of payments. Among these excludable payments are 
discretionary bonuses, gifts and pay-
ments in the nature of gifts on special 
occasions, contributions by the em-
ployer to certain welfare plans and 
payments made by the employer pursu-
ant to certain profit-sharing, thrift and 
savings plans. These are discussed in §§778.211 through 778.214. Bonuses 
which do not qualify for exclusion from 
the regular rate as one of these types 
must be totaled in with other earnings 
to determine the regular rate on which 
overwork must be based. Bonus 
payments are payments made in addi-
tion to the regular earnings of an em-
ployee. For a discussion on the bonus 
form as an evasive bookkeeping device, 
see §§778.502 and 778.503.

§ 778.209 Method of inclusion of bonus 
in regular rate.

(a) General rules. Where a bonus pay-
ment is considered a part of the regular 
rate at which an employee is employed, 
it must be included in computing his 
regular hourly rate of pay and over-
time compensation. No difficulty arises 
in computing overtime compensation if 
the bonus covers only one weekly pay 
period. The amount of the bonus is 
merely added to the other earnings of 
the employee (except statutory exclu-
sions) and the total divided by the total 
hours worked. Under many bonus