§ 778.218 Pay for certain idle hours.

(a) General rules. Payments which are made for occasional periods when the employee is not at work due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, where the payments are in amounts approximately equivalent to the employee’s normal earnings for a similar period of time, are not made as compensation for his hours of employment. Therefore, such payments may be excluded from the regular rate of pay under section 7(e)(2) of the Act and, for the same reason, no part of such payments may be credited toward overtime compensation due under the Act.

(b) Limitations on exclusion. This provision of section 7(e)(2) deals with the type of absences which are infrequent or sporadic or unpredictable. It has no relation to regular “absences” such as lunch periods nor to regularly scheduled days of rest. Sundays may not be workdays in a particular plant, but this does not make them either “holidays” or “vacations,” or days on which the employee is absent because of the failure of the employer to provide sufficient work. The term holiday is read in its ordinary usage to refer to those days customarily observed in the community in celebration of some historical or religious occasion; it does not refer to days of rest given to employees in lieu of or as an addition to compensation for working on other days.
§ 778.219 Pay for foregoing holidays and vacations.

(a) Sums payable whether employee works or not. As explained in §778.218, certain payments made to an employee for periods during which he performs no work because of a holiday or vacation are not required to be included in the regular rate because they are not regarded as compensation for working. Suppose an employee who is entitled to such a paid idle holiday or paid vacation foregoes his holiday or vacation and performs work for the employer on the holiday or during the vacation period. If, under the terms of his employment, he is entitled to a certain sum as holiday or vacation pay, whether he works or not, and receives pay at his customary rate (or higher) in addition for each hour that he works on the holiday or vacation day, the certain sum allocable to holiday or vacation pay is still to be excluded from the regular rate. It is still not regarded as compensation for hours of work if he is otherwise compensated at his customary rate (or at a higher rate) for his work on such days. Since it is not compensation for work it may not be credited toward overtime compensation due under the Act. Two examples in which the maximum hours standard is 40 hours may serve to illustrate this principle:

(1) An employee whose rate of pay is $5 an hour and who usually works a 6-day 48-hour week is entitled, under his employment contract, to a week’s paid vacation in the amount of his usual straight-time earnings—$240. He foregoes his vacation and works 50 hours in the week in question. He is owed $250 as his total straight-time earnings for the week, and $240 in addition as his vacation pay. Under the statute he is owed an additional $25 as overtime premium (additional half-time) for the 10 hours in excess of 40. His regular rate of $5 per hour has not been increased by virtue of the payment of $240 vacation pay, but no part of the $240 may be offset against the statutory overtime compensation which is due. (Nothing in this example is intended to imply that the employee has a statutory right to $240 or any other sum as vacation pay. This is a matter of private contract between the parties who may agree that vacation pay will be measured by straight-time earnings for any agreed number of hours or days, or by total normal or expected take-home pay for the period or that no vacation pay at all will be paid. The example merely illustrates the proper method of computing overtime for an employee whose employment contract provides $240 vacation pay.)

(2) An employee who is entitled under his employment contract to 8 hours’ pay at his rate of $5 an hour for the Christmas holiday, foregoes his holiday and works 9 hours on that day. During the entire week he works a total of 50 hours. He is paid under his contract, $250 as straight-time compensation for 50 hours plus $40 as idle holiday pay. He is owed, under the statute, an additional $25 as overtime premium (additional half-time) for the 10 hours in excess of 40. His regular rate of $5 per hour has not been increased by virtue of the holiday pay but no part of the...