

§ 778.503

§ 778.503 Pseudo “percentage bonuses.”

As explained in § 778.210 of this part, a true bonus based on a percentage of total wages—both straight time and overtime wages—satisfies the Act’s overtime requirements, if it is paid unconditionally. Such a bonus increases both straight time and overtime wages by the same percentage, and thereby includes proper overtime compensation as an arithmetic fact. Some bonuses, however, although expressed as a percentage of both straight time and overtime wages, are in fact a sham. Such bonuses, like the bonuses described in § 778.502 of this part, are generally separated out of a fixed weekly wage and usually decrease in amount in direct proportion to increases in the number of hours worked in a week in excess of 40. The hourly rate purportedly paid under such a scheme is artificially low, and the difference between the wages paid at the hourly rate and the fixed weekly compensation is labeled a percentage of wage “bonus.”

Example: An employer’s wage records show an hourly rate of \$5.62 per hour, and an overtime rate of one and one-half times that amount, or \$8.43 per hour. In addition, the employer pays an alleged percentage of wage bonus on which no additional overtime compensation is paid:

Week 1—40 hours worked:	
40 hours at \$5.62 per hour	\$224.80
Percentage of total earnings bonus at 33.45% of \$224.80	75.20
Total	300.00
Week 2—43 hours worked:	
40 hours at \$5.62 per hour	224.80
3 hours at \$8.43 per hour	25.29
Subtotal	250.09
Percentage of total earnings bonus at 19.96% of \$250.09	49.91
Total	300.00
Week 3—48 hours worked:	
40 hours at \$5.62 per hour	224.80
8 hours at \$8.43 per hour	67.44
Subtotal	292.24
Percentage of total earnings bonus at 2.66% of \$292.24	7.76
Total	300.00

This employee is in fact being paid no overtime compensation at all. The records in fact reveal that the employer pays exactly \$300 per week, no matter how many hours the

employee works. The employee’s regular rate is \$300 divided by the number of hours worked in the particular week, and his overtime compensation due must be computed as shown in § 778.114.

[46 FR 7319, Jan. 23, 1981]

Subpart G—Miscellaneous

§ 778.600 Veterans’ subsistence allowances.

Subsistence allowances paid under Public Law 346 (commonly known as the G.I. bill of rights) to a veteran employed in on-the-job training program work may not be used to offset the wages to which he is entitled under the Fair Labor Standards Act. The subsistence allowances provided by Public Law 346 for payment to veterans are not paid as compensation for services rendered to an employer nor are they intended as subsidy payments for such employer. In order to qualify as wages under either section 6 or section 7 of the Act, sums paid to an employee must be paid by or on behalf of the employer. Since veterans’ subsistence allowances are not so paid, they may not be used to make up the minimum wage or overtime pay requirements of the Act nor are they included in the regular rate of pay under section 7.

§ 778.601 Special overtime provisions available for hospital and residential care establishments under section 7(j).

(a) *The statutory provision.* Section 7(j) of the Act provides, for hospital and residential care establishment employment, under prescribed conditions, an exemption from the general requirement of section 7(a) that overtime compensation be computed on a work-week basis. It permits a 14-day period to be established for the purpose of computing overtime compensation by an agreement or understanding between an employer engaged in the operation of a hospital or residential care establishment, and any of his employees employed in connection therewith. The exemption provided by section 7(j) applies:

if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of the work, a work period of 14 consecutive days is