causes’ are absences due to jury service, reporting to a draft board, attending a funeral of a family member, inability to reach the workplace because of weather conditions. Only absences of a nonroutine character which are infrequent or sporadic or unpredictable are included in the “other similar cause” category.

§ 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 $40 holiday pay may be credited toward statutory overtime compensation due.

(b) Premiums for holiday work distinguished. The example in paragraph (a)(2) of this section should be distinguished from a situation in which an employee is entitled to idle holiday pay under the employment agreement only when he is actually idle on the holiday, and who, if he foregoes his holiday also, under his contract, foregoes his idle holiday pay.

(1) The typical situation is one in which an employee is entitled by contract to 8 hours’ pay at his rate of $5 an hour for certain named holidays when no work is performed. If, however, he is required to work on such days, he does not receive his idle holiday pay. Instead he receives a premium rate of $7.50 (time and one-half) for each hour worked on the holiday. If he worked 9 hours on the holiday and a total of 50 hours for the week, he would be owed,
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§ 778.220 “Show-up” or “reporting” pay.

(a) Applicable principles. Under some employment agreements, an employee may be paid a minimum of a specified number of hours’ pay at the applicable straight time or overtime rate on infrequent and sporadic occasions when, after reporting to work at his is not provided starting time on a regular work day or on another day on which he has been scheduled to work, he is not provided with the expected amount of work. The amounts that may be paid under such an agreement over and above what the employee would receive if paid at his customary rate only for the number of hours worked are paid to compensate the employee for the time wasted by him in reporting for work and to prevent undue loss of pay resulting from the employer’s failure to provide expected work during regular hours. One of the primary purposes of such an arrangement is to discourage employers from calling their employees in to work for only a fraction of a day when they might get full-time work elsewhere. Pay arrangements of this kind are commonly referred to as “show-up” or “reporting” pay. Under the principles and subject to the conditions set forth in subpart B of this part and §§ 778.201 through 778.207, that portion of such payment which represents compensation at the applicable rates for the straight time or overtime hours actually worked, if any, during such period may be credited as straight time or overtime compensation, as the case may be, in computing overtime compensation due under the Act. The amount by which the specified number of hours’ pay exceeds such compensation for the hours actually worked is considered as a payment that is not made for hours worked. As such, it may be excluded from the computation of the employee’s regular rate and cannot be credited toward statutory overtime compensation due him.

(b) Application illustrated. To illustrate, assume that an employee entitled to overtime pay after 40 hours a week whose workweek begins on Monday and who is paid $5 an hour reports for work on Monday according to schedule and is sent home after being given only 2 hours of work. He then

under his contract, $67.50 (9 × $7.50) for the holiday work and $205 for the other 41 hours worked in the week, a total of $272.50. Under the statute (which does not require premium pay for a holiday) he is owed $275 for a workweek of 50 hours at a rate of $5 an hour. Since the holiday premium is one and one-half times the established rate for nonholiday work, it does not increase the regular rate because it qualifies as an overtime premium under section 7(e)(6), and the employer may credit it toward statutory overtime compensation due and need pay the employee only the additional sum of $2.50 to meet the statutory requirements. (For a discussion of holiday premiums see § 778.203.)

(2) If all other conditions remained the same but the contract called for the payment of $10 (double time) for each hour worked on the holiday, the employee would receive, under his contract $90 (9 × $10) for the holiday work in addition to $205 for the other 41 hours worked, a total of $295. Since this holiday premium is also an overtime premium under section 7(e)(6), it is excludable from the regular rate and the employer may credit it toward statutory overtime compensation due. Because the total thus paid exceeds the statutory requirements, no additional compensation is due under the Act. In distinguishing this situation from that in the example in paragraph (a)(2) of this section, it should be noted that the contract provisions in the two situations are different and result in the payment of different amounts. In example (2) the employee received a total of $395 attributable to the holiday: 8 hours’ idle holiday pay at $5 an hour, due him whether he worked or not, and $45 pay at the nonholiday rate for 9 hours’ work on the holiday. In the situation discussed in this paragraph the employee received $90 pay for working on the holiday—double time for 9 hours of work. Thus, clearly, all of the pay in this situation is paid for and directly related to the number of hours worked on the holiday.