

Minimum Wage Opinion Letter 01/25/02 - Dual Rate Structure for Same Work in Overtime Hours

January 25, 2002

I am writing in response to your request for a written opinion regarding the legality of a dual rate structure for certain employees performing overtime work.

As I understand it, your client employs approximately 200 non-bargaining unit, seasonal employees for a period of approximately four months a year. These seasonal employees are paid either \$8.01 or \$8.50 per hour if they worked for the company in the prior season. Under the terms of a collective bargaining agreement, so long as the company employs these seasonal workers, regular full-time bargaining unit employees have the right to work 40 hours Monday through Friday at \$13.69 per hour.

The company and the union are considering an arrangement whereby such bargaining unit employees would be able to work overtime hours during this seasonal period. However, the company considers it cost prohibitive for the \$13.69 rate to apply to overtime. It would be willing to use bargaining unit employees if it were permitted to pay them \$8.50 per hour for work over 40 hours in a given workweek during the season. The company would determine the additional half time due using the "blended rate" formula. The work being performed during the first 40 hours and during the overtime hours would be identical. Your question is whether establishing such a dual rate structure within a work week for the same work is permissible under state law.

As you know, the Massachusetts Minimum Fair Wage Law, M.G.L. c. 151, and regulations promulgated thereunder, 455 C.M.R. §2.01, et seq., do not directly address this issue. However, there is implicit in the law the concept that a pay plan may not be structured so as to circumvent the purposes of the law. While your client's proposed agreement may be deemed by the parties involved to be mutually beneficial, this Office is concerned about the broader application of an interpretation of the law that would permit such an arrangement. If an employer were allowed to structure a work week such that employees receive a lower hourly rate for identical work performed during overtime hours, the requirements of the overtime law could be far too easily evaded. Therefore, it is this Office's opinion that the pay arrangement you have outlined is not permissible under state law. The hourly rate paid for identical work performed in overtime hours cannot be lower than the rate paid for the non-overtime hours. ^[1]

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

Sincerely,
Lisa C. Price
Legal Counsel

^[1] It is my understanding that the U.S. Department of Labor Wage and Hour Division Boston Office has rendered an informal opinion that such a pay plan would also be impermissible under federal law.