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DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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November 27, 2001

Robert Chandler, Esq.
Stoneham, Chandler & Miller
99 High Street
Boston, MA 02110

Re: MW 2001-014
Blended wage overtime calculation

Dear Attorney Chandler:

I am writing in response to your request for this Office's written opinion regarding the calculation of overtime pay for employees who work on both prevailing wage and non-prevailing wage jobs in a given work week. As you may be aware, past opinion letters from this Office regarding this issue have applied a formula for calculating overtime based on the non-overtime rates of pay. This method of calculation was originally set forth by our predecessor agency, the Department of Labor and Industries, in Administrative Bulletin 88-80. This formula, of course, assumes two things: first, that the "mix" of prevailing wage and non-prevailing wage work occurs both before and after the first 40 hours of the employee's work week; and the second, that the distribution of the two or more jobs performed in the "overtime" part of the work week is directly proportional to the "mix" of prevailing wage and non-prevailing wage work which occurs in the first 40 hours of the work week. In your letter, you present four separate scenarios which have caused us to reconsider this method of calculating a "blended rate." Hereafter, all hours in the work week shall be included in the weighted average before determining the "blended" rate for overtime pay for employees working two or more jobs for one employer.

Where an employee works at two or more different types of work in a single work week, for a single employer, for which different straight-time rates of pay (not less than minimum wage) have been established, his/her regular hourly rate of pay for that week is the weighted average of such rates. The regular hourly rate for that employee is determined by adding together all earnings for the week and dividing this total by the number of hours worked at all

jobs.¹ This method of calculation supercedes the method of calculation set forth in Administrative Bulletin 88-80, followed by our predecessor agency, the Department of Labor and Industries, and several DOS opinion letters issued prior to this date.

Turning to your specific questions, you have asked us to address four scenarios where an employee works two different types of work for which two different rates of pay have been established. To illustrate how this method would work, I shall address each scenario in turn. For purposes of these calculations, I shall assume that the employer utilizes either a Monday to Sunday or Sunday to Saturday work week, that no work was performed on Sunday, and that the prevailing wage rate represents the base rate or hourly rate paid to the employee (which is the "total rate" listed on prevailing wage schedules less employer contributions to bona fide health and welfare and pension plans.)

Scenario 1: An employee works 40 hours Monday to Friday on prevailing wage work paid at \$30 per hour. He then is assigned on Saturday to work on a private job for 10 hours at the straight-time rate of \$20 per hour. What should the employee be paid for the ten hours of overtime?

Response: : The employee's regular hourly rate of pay is determined by adding all earnings for the week and dividing by the total hours worked at both jobs:

$$\$1200 + \$200 = \$1400$$

$$\$1400 \div 50 = \$28.00$$

Employee is due additional half-time pay for the 10 overtime hours ($\$14.00 \times 10$)

Employee must be paid: $\$1400 + \$140 = \$1540$

Scenario 2: An employee works 40 hours Monday to Friday on private work paid at \$20 per hour. He then is assigned on Saturday to work on a prevailing wage job for 10 hours at the straight-time rate of \$30 per hour. What should the employee be paid for the 10 hours of overtime?

Response: The employee's regular hourly rate of pay is determined by adding all earnings for the week and dividing by the total hours worked at both jobs:

$$\$800 + \$300 = \$1100$$

$$\$1100 \div 50 = \$22.00$$

Employee is due additional half-time pay for the 10 overtime hours ($\$11.00 \times 10$)

Employee must be paid: $\$1100 + \$110 = \$1210$

¹An employee's regular hourly rate is defined in 455 C.M.R. §2.01, in pertinent part, as "[t]he amount that the employee is regularly paid for each hour of work. When an employee ... is paid on ... any basis other than an hourly rate, the regular hourly rate shall be determined by dividing the total hours worked during the week into the employee's total weekly earnings" (emphasis added). For analogous federal law governing employees working at two or more rates, see 29 C.F.R. §778.115.

Scenario 3: An employee works 30 hours Monday to Friday on private work paid at \$20 per hour and 10 hours Monday to Friday on prevailing wage work paid at \$30 per hour. He then works 10 hours on private work on Saturday at the straight-time rate of \$20 per hour. What should he be paid for the 10 hours of overtime?

Response: : The employee's regular hourly rate of pay is determined by adding all earnings for the week and dividing by the total hours worked at both jobs:

$$[(40 \times \$20) + (10 \times \$30)] = \$1100$$

$$\$1100 \div 50 = \$22.00$$

Employee is due additional half-time pay for the 10 overtime hours ($\$11.00 \times 10$)

$$\text{Employee must be paid: } \$1100 + \$110 = \$1210$$

Scenario 4: Same scenario as #3, but the employee works 10 hours on prevailing wage work rather than private work on Saturday.

Response: The employee's regular hourly rate of pay is determined by adding all earnings for the week and dividing by the total hours worked at both jobs:

$$[(30 \times \$20) + (20 \times \$30)] = \$1200$$

$$\$1200 \div 50 = \$24.00$$

Employee is due additional half-time pay for the 10 overtime hours ($\$12.00 \times 10$)

$$\text{Employee must be paid: } \$1200 + 120 = \$1320$$

I hope this information has been helpful. If we can be of any further assistance, please feel free to contact Lisa Price, Legal Counsel, at (617) 727-3452, ext. 135.

Sincerely,



Robert J. Prezioso
Deputy Director

cc: Kathryn B. Palmer, General Counsel, DOS
Ronald E. Maranian, Program Manager, DOS
Daniel S. Field, Assistant Attorney General, Fair Labor & Business Practices Div.