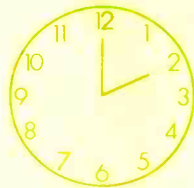
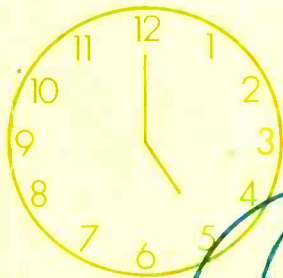
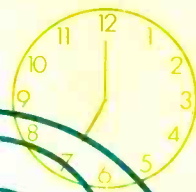
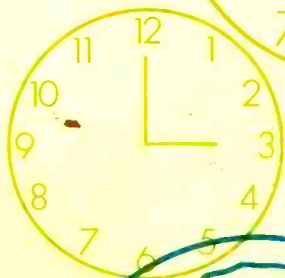
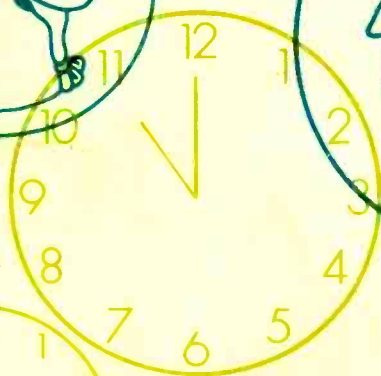
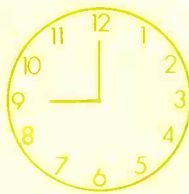


BROADCASTER'S WAGE & HOUR GUIDE

A Summary of the Principal Provisions of the Fair Labor Standards Act



The *Broadcaster's Wage and Hour Guide* is a summary of the principal provisions of the Fair Labor Standards Act, including the 1974 amendments. While affording stations necessary facts about the Federal Wage and Hour Law, this guide is not intended to replace the advice of legal counsel in situations where deemed necessary and appropriate.

Broadcasters should keep in mind the fact that various state laws may now be more stringent than federal legislation. Where the state law provides for a higher minimum wage, a more restrictive workweek, or a higher employment age for minors, the more stringent state standards must be observed.

For more detailed information concerning specific cases, write or phone the Department of Broadcast Management, National Association of Broadcasters, 1771 N Street, N.W., Washington, D.C. 20036, 202-293-3500.

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The Fair Labor Standards Act

The Fair Labor Standards Act of 1938, as amended, (FLSA) establishes six areas of primary concern to broadcasters:

- Minimum Wage Standards
- Overtime Pay Standards
- Employee Exemptions
- Child Labor
- Equal Pay Standards
- Recordkeeping Requirements

The Fair Labor Standards Act is administered by the United States Department of Labor's Wage and Hour Division.

The Act covers employees engaged in interstate or foreign commerce or in the production of goods for such commerce, and employees in certain large enterprises which have employees handling, selling or working on goods that have moved in or were produced for interstate or foreign commerce. Broadcasting employers are covered by the Act as they are considered to be engaged in interstate commerce. The Wage and Hour Division and the courts have held that every radio and television station—regardless of revenues or the size of its staff—is subject to the Fair Labor Standards Act whether the broadcasts of the station are heard beyond the boundaries of one state or not.

Under the 1974 amendments to the Act, broadcast employees, unless specifically exempt, must receive:

- Beginning January 1, 1975, a minimum wage of not less than \$2.10 an hour.
- Beginning January 1, 1976, a minimum wage of not less than \$2.30 an hour.

Overtime compensation at a rate of at least one and one-half times the employee's regular rate of pay for all hours worked in excess of 40 in a workweek.

Broadcasters should examine their state laws carefully before implementing any minimum wage and overtime requirements. If a state wage and hour law contains stricter provisions than the federal law, the state standards prevail.

The Employer-Employee Relationship

In order for the Fair Labor Standards Act to apply to a person engaged in work covered by the Act, an employee-employer relationship must exist. When professional free-lance writers, artists or people with other talent provide services to a number of clients as inde-

pendent contractors, they are usually not classified as employees. In the case of stations who use "stringers" or other parttime or semi-retired employees to obtain local interest news stories in their coverage areas, whether or not these "reporters" are considered employees depends on the nature of the working arrangement between the station and the stringer. If these people report on various local events which they encounter in the course of other occupations, and the station has the option of accepting or rejecting their stories as it pleases, these stringers are normally considered free-lance writers rather than parttime employees. However, if these reporters are assigned a definite territory, given specific meetings and other events to attend, or if their features are regularly scheduled for airing, the possibility of an employee-employer relationship with the station exists, in which case they are subject to the provisions of the Act.

Under certain conditions, trainees and students who "work" at a station for their own advantage will not be considered employees. The Wage and Hour laws do not apply to trainees when six specific criteria are met:

1. Training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
2. Training is for the benefit of the trainee or student;
3. The trainee or student does not displace regular employees, but works under their close supervision;
4. The employer who provides the training derives no immediate advantage from the activities of the trainee or student, and on occasion his operations may actually be impeded;
5. The trainee or student is not necessarily entitled to a job at the completion of the training period, and;
6. The employer and the trainee or student understand that the trainee or student is not entitled to wages for the time spent in training.

For example, students assigned to visit a station, to observe operations, or perform certain duties of a station employee under the constant and individual supervision of that employee would not be considered employees for wage-hour purposes.

Exempt Employees

Radio and television station employees employed in bona fide executive, administrative or professional ca-

pacities, or as outside sales people, perform work which is exempt from both the minimum wage and overtime requirements under Section 13 (a) (1) of the Act. The duties and responsibilities of the job and the salary an employee receives determine an employee's exempt status except in the case of an outside salesperson for whom there is no salary test.

Section 13 (b) (9) of the Fair Labor Standards Act exempts radio or television *announcers, news editors* and *chief engineers* in small markets from the overtime pay requirements of the Act if the studio is located:

(a) In a city or town of 100,000 or less according to the latest decennial census as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in excess of 100,000 or

(b) In a city or town of 25,000 or less, which is part of a standard metropolitan statistical area, if the city or town is 40 or more airline miles from the principal city in such area.

Employees exempt from overtime must still be paid the statutory minimum wage for all hours worked.

NAB's publication *The Overtime Exemption for Small Market Broadcasting Stations* explains how to determine whether this exemption applies to your station. The booklet is available from the NAB Department of Broadcast Management upon request.

Executive (Supervisory) Employee Exemption

Employees will qualify for the executive exemption from both the minimum wage and overtime pay requirements if they meet all of the following tests:

1. They must supervise and manage as their primary duty the operation of the station or of one customarily recognized department within it;
2. They must actively direct the work of two or more subordinate employees;
3. They must have the authority to hire or fire, or their suggestions and recommendations on hiring, firing, advancement, promotion or on any other change of status must be given particular weight;
4. They must customarily and regularly exercise discretionary powers;
5. They should not devote more than 20 percent of work time to nonexempt activity unrelated to managerial duties;
6. They must receive a minimum salary of \$155 per week exclusive of board, lodging and other facilities.

A special proviso exists for higher salaried executives. If they earn at least \$250 a week and have management as their primary duty (over 50 percent of their time), the 20 percent limitation on non exempt work no longer applies. Any questions about what constitutes exempt work can be answered by the nearest Wage and Hour area office or the NAB.

General Managers, Station Managers, News Directors, Program Directors, Chief Engineers and other employees who meet *all* of the above requirements will be exempt as Executives (Supervisors). Employees training to become executives who do not actually perform the duties of an executive are not exempt from the minimum wage or overtime pay requirements. The managerial and supervisory duties of employees rather than their job titles determine whether or not broadcast employees qualify for the exemption.

Administrative Employee Exemption

Employees will qualify for the administrative exemption from both the minimum wage and overtime pay requirements of the Fair Labor Standards Act if they meet all of the following tests:

1. Their primary duty must be responsible office or nonmanual work directly related to management policies or general business operations at the station;
2. They must customarily and regularly exercise discretion and independent judgment, with the authority to make an independent choice in significant matters;
3. They must regularly assist a bona fide executive or administrative employee or perform special assignments with only general supervision;
4. They must not spend more than 20 percent of their workweek on nonexempt work not closely related to their administrative duties.
5. They must receive a minimum salary of \$155 per week exclusive of board, lodging and other facilities.

When an administrative employee is paid a salary of \$250 a week or more, the 20 percent limitation on non-exempt work no longer applies. Employees will continue to be exempt if more than 50 percent of their duties consist of responsible office or nonmanual work directly related to management policies or general business operation, including work requiring the exercise of discretion and independent judgment.

The exempt status of an administrative employee depends on whether his or her duties, responsibilities and salary meet all of the above requirements. Titles alone

are of little importance in making this determination. Some assistants to top executives, for example, perform responsible duties and may therefore qualify as administrators. Administrative assistants at larger stations may qualify as long as the title is not a euphemism for personal secretary. Specialists and administrative types such as promotion managers, community affairs coordinators or other similar positions of high individual responsibility and no staff to supervise are usually considered to be employed in an administrative capacity.

Professional Employee Exemption

Employees will qualify for the professional exemption from both the minimum wage and overtime pay requirements if they meet all of the following tests:

1. Their primary duty must be either work requiring knowledge of an advanced type in a field of science or learning, usually obtained through a prolonged course of specialized instruction, or work that is original and creative in character in a recognized artistic field that demands invention, imagination or talent;

2. The employees must consistently exercise discretion and judgment as required by the job. The work should be predominantly intellectual and varied, rather than routine mental, manual, mechanical or physical;

3. They must not spend more than 20 percent of the workweek on activities not essentially a part of their professional duties;

4. They must receive a minimum salary of \$170 per week exclusive of board, lodging and other facilities.

The 20 percent test on nonexempt work does not apply to professional employees who are paid a salary or fee of at least \$250 a week, excluding board, lodging and other facilities, as long as more than 50 percent of their duties consists of work requiring knowledge of an advanced type in a field of science or learning, or invention, imagination or talent in a recognized field of artistic endeavor.

Creative writers and creative artists and some special program performers at broadcast stations who meet the criteria outlined above may qualify as exempt professionals. Special program performing or announcing generally consists of duties that are original and creative in character, requiring invention, imagination, or talent. These duties include functioning as a master of ceremonies, playing dramatic, comedy or straight parts in a program, interviewing, conducting farm, fashion and home economics programs, covering public events and

acting as narrator or commentator. A formally educated meteorologist or agronomist who worked as a weatherman or farm reporter would likely qualify for the professional exemption.

The minimum weekly salary specified in the requirements for the executive, administrative and professional exemptions as one of several tests used in determining the application of the exemption is *not* a minimum wage requirement. An employer is only required to pay this salary if he or she wishes to claim the exemption.

Outside Sales Employees and Announcer/Sales Persons

Outside salespersons are exempt from both the minimum wage and overtime requirements if they:

1. Are regularly and customarily engaged away from the station in making sales, obtaining new customers and contracts for service, and

2. Perform not more than 20 percent nonexempt work a week. The number of hours worked in the workweek by the nonexempt employees at the station is the basis on which a salesperson's permissible nonexempt work is computed.

No minimum salary is required to qualify for the outside salesperson exemption.

Announcer/Salesperson

Regular staff announcing usually consists of giving station identification and time signals, announcing the names of programs, and similar routine work. Since such announcing is generally nonexempt work, outside sales people who spend more than 20 percent of their workweek performing such announcing lose their exempt status. On the other hand, an outside salesperson who performs the special program announcing described earlier may retain his or her exempt status. When the special program announcing and outside sales exemptions are "tacked" together, the stricter of the two standards must be met. For example, a professional announcer/salesperson must earn the minimum of \$170 per week on a salary basis to be exempt, even though outside sales people do not have to be guaranteed a minimum weekly salary. A sales guarantee is considered part of the salary, but commission earnings are not. While talent fees for announcing particular events cannot be counted as part of the salary, a regular guarantee for such announcing should be counted.

Child Labor

Since radio and television stations engage in interstate commerce, they are covered by the Child Labor Provisions of the Fair Labor Standards Act as amended. The basic minimum age for employment in any occupation at a station that is *not* hazardous is 16 years of age. Although some employers in the retail industry can pay less than the statutory minimum, broadcast employers must pay all young people, *including student employees*, in accordance with the statutory minimum wage and overtime provisions of the Act unless they qualify for special minimum wages such as student-learners in bona fide vocational education programs for whom a certificate is first secured from the Wage and Hour Division authorizing a special minimum wage.

Sixteen- and 17-year olds may be employed in any occupation that is not declared by the Secretary of Labor to be hazardous. Although the Secretary has not officially declared any broadcasting job hazardous, operation of station transmitter equipment by employees under 18 years of age should be closely supervised. The occupation of motor vehicle driver or helper has been declared hazardous for people under 18 years of age.

Employment of 14- and 15-year old youths is limited to certain occupations under conditions which do not interfere with their schooling, health or well-being. Minors 14 and 15 years old may perform general office or sales work and routine staff announcing outside of school hours between the hours of 7 a.m. and 7 p.m. except from June 1 through Labor Day, when they may work until 9 p.m. However, they may not work more than 3 hours on a school day or 18 hours a week when a school is in session. Eight hours on a nonschool day and 40 hours during nonschool weeks are the maximum number of hours 14- and 15-year-old students may be employed.

Performers or actors are exempt from the child labor provisions, as are children employed exclusively in non-hazardous jobs at a radio or television station owned by one of their parents.

The 1974 amendments to the FLSA added two provisions: (1) Any employer who violates the child labor provisions or any regulation thereof shall be subject to a civil penalty not to exceed \$1,000 for each violation; (2) The Secretary of Labor may by regulation require employers to obtain proof of age for all minor employees. As of August, 1975, proof of age was not applicable and would not be until the issuance of final regulations.

Child Labor Civil Money Penalty Regulations 579/580 became effective July 18, 1975. Part 579 gives the violations subject to civil money penalty, sets rules for notices of penalty assessments, lists factors considered in assessing the amount of penalty, provides for filing exceptions to the notice of penalty of the occurrence of a child labor violation, and outlines the methods provided by the Act for collecting penalties after final determination. Part 580 sets forth the rules of practice governing administrative proceedings to be conducted when exceptions to notices of penalty are filed.

Age and Employment Certificates

Most states require certificates or work permits for minor employees. Such certificates also would be acceptable under the FLSA so that an employer can be protected from unintentional violation of the minimum age provisions when the certificate shows that the minor is at least the minimum age for the job.

State Laws

All states have some child labor laws. Check your state's law before hiring a young employee. When both state and federal laws apply, the more stringent standard must be observed.

4

Student-Learners and Handicapped Employees

Student-learners may be compensated subminimum wages for limited periods of time, normally not longer than a year, provided certificates permitting such employment are obtained from an authorized representative of the Wage and Hour Division of the U.S. Department of Labor.

To qualify as a student-learner, the employee must be a student receiving instruction in an accredited school, college or university, and employed on a part-time basis under a bona fide vocational training program.

In addition, the following conditions must be satisfied before the special certificate may be issued authorizing the employment of a student-learner at subminimum wages:

1. The employment of the student-learner at subminimum wages must be necessary to prevent curtailment of opportunities for employment;

2. The student-learner must be at least 16 years of age, unless employed in a hazardous occupation, in which case he or she must be 18 years of age;

3. The occupation for which the student-learner is receiving preparatory training must require a sufficient degree of skill to make a substantial learning period necessary;

4. The training must not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations;

5. The employment of the student-learner must not have the effect of displacing a worker employed in the establishment;

6. The student-learner's subminimum wages must not tend to impair or depress wage rates or working standards established for experienced workers for work of a comparable character;

7. The occupational needs of the community or industry must warrant the training of student-learners;

8. There must be no serious outstanding violations of the provisions of a student-learner certificate previously issued to the employer, or violations of other provisions of the Fair Labor Standards Act of 1938 as amended;

9. The number of student-learners to be employed at a station must not be more than a small proportion of its working staff.

The special minimum wage rate shall not be less than 75 percent of the applicable minimum wage for non-exempt employees.

The number of hours of employment training each week added to the hours of school instruction should not exceed 40 hours. When school is not in session, the student-learner may work additional weekly hours as long as the total hours worked does not exceed 8 in any one day or 40 in any one week. Student-learners should be identified as such on payroll records. The certificate should be kept 3 years after the last date of the student-learner's employment.

Handicapped Employees

Special minimum wage certificates may be obtained for employment of individuals whose earning or productive capacity is impaired by old age or physical or mental handicap. The conditions for granting a certificate are: (a) a certificate is necessary to prevent curtailment of the individual's opportunities for employment and (b) the individual is handicapped for the work he or she is to perform to the extent that the individual cannot earn at least the applicable minimum wage. Certificates

are not issued for less than 75 percent of the applicable minimum wage for nonexempt employees unless the need for a lower rate is clearly justified by the employer. In addition, wage payments must be based on the productivity of the handicapped worker as it relates to normal productivity, but not less than the special minimum wage rate set in the certificate. Special minimum wage certificates may also be issued for handicapped on-the-job trainees in accordance with the above conditions.

Additional detailed information concerning utilization of these employees may be obtained from your area or regional Wage and Hour Division or by getting in touch with the Broadcast Management Department of NAB.

5

Equal Pay Standard

The equal pay provision of the Fair Labor Standards Act prohibits differentials in pay based on the factor of sex. An employer may not pay employees of one sex a rate of pay lower than is paid to employees of the opposite sex within an establishment for equal work on jobs requiring:

1. Equal Skill
2. Equal Effort
3. Equal Responsibility
4. Performance under similar working conditions.

The equal pay provision applies to all employees subject to the minimum wage provisions of the Act as well as to executive, administrative, professional and outside sales employees at broadcast stations.

A wage differential between men and women may be justified in cases in which employees are compensated by the following methods:

- Seniority system
- Merit system
- A system measuring earnings by quantity or quality of production
- Other bona fide systems based on factors other than sex.

The Equal Pay Amendment prohibits any labor organization from causing or attempting to cause an employer to violate these equal pay provisions through collective bargaining. An employer who violates the equal pay provision is liable for unpaid minimum wages or unpaid overtime compensation. The law also prohibits an employer from reducing the wage rate of any

employee in order to eliminate a wage differential based on sex. Rather, the employer must raise the wage rates of the members of the lower-paid sex to the level of the members of the higher-paid sex.

6

Age Discrimination

The Age Discrimination in Employment Act of 1967, also enforced by the Wage and Hour Division, promotes employment of older persons based on their ability rather than age. Arbitrary age discrimination in employment is strictly prohibited by the Act. The following actions on the part of employers are also prohibited:

1. Failing or refusing to hire an individual, discharging or discriminating against him or her with respect to compensation, terms, conditions, or privileges of employment because of age;
2. Classifying employees in a way which tends to deprive people of employment opportunities because of age;
3. Reducing the wage rate of an employee in order to comply with the Act.

Labor unions are also prohibited from discriminating against or expelling individuals because of their age.

An employer may take any action otherwise prohibited where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business. Differentiations based on reasonable factors other than age are not unlawful under the Act. A station may observe the terms of a bona fide seniority system or any other benefit plan such as retirement, pension or insurance plan provided such plan is neither a subterfuge to evade the purposes of the Act nor an attempt to excuse the failure of the station to hire any individual.

Any employee may be disciplined or dismissed for good cause, regardless of age or sex.

7

Hours Worked

Employees may work as many hours a week as are necessary as long as they receive one and one-half times their regular rate of pay as overtime compensation for hours worked over 40 in a workweek (unless, of course,

they qualify for the exemptions described on page 2). However, neither the regular rate of pay nor the overtime compensation an employee should receive can be computed without knowing the number of hours worked in a workweek. The Fair Labor Standards Act takes a single workweek—seven consecutive 24-hour periods—as its standard and does not permit averaging of hours over 2 or more weeks. This workweek ordinarily includes “all time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” It is often difficult in the broadcasting industry to determine whether certain employee activities should be counted as “hours worked.” Generally, working hours include all time spent during the workweek in physical or mental exertion, whether burdensome or not, controlled or required by the employer and pursued necessarily and primarily for the employer and his business. Here are troublesome areas to watch.

Employees “Suffered or Permitted” to Work

Work not requested but suffered or permitted is work time. An employee may voluntarily continue to work at the end of his or her shift to finish an assigned task, but as long as the employer knows or has reason to believe that work is being performed, it is the duty of management to count the time as hours worked. The mere issuance of a rule against such work is not enough. Management must make every effort to enforce its work rules.

Lectures, Meetings and Training Programs

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if attendance is voluntary and outside the employee’s regular working hours, as long as the course is not directly related to the employee’s job and he or she performs no productive work during such attendance. When employees are given to understand that their employment at the station will be adversely affected by their nonattendance, attendance is not in fact voluntary and must be considered time spent working. Training designed to make an employee handle his or her present job more effectively or efficiently must be computed as hours worked. On the other hand, a training course instituted to prepare for advancement by upgrading the employee to a higher skill is not considered directly related to the employee’s job, even though such courses often have the positive side effect of improving skills in performing his or her present task.

Travel

While time spent by an employee in travel as part of his or her principal activity at work qualifies as hours worked, time spent in home to work travel is excluded from hours worked.

For one-day trips out of town, employees must be credited with all the hours between the time they begin their assignment and the time the work is completed and they return home. Since the time involved in getting to the railroad station or airport to begin the trip is essentially in the "home-to-work" category, that part of the trip can be deducted from hours worked, as can the usual meal time elapsed during the one-day trip.

For overnight trips, travel time must be counted as hours worked when it cuts across an employee's regular work shift, even if the travel is on a regular day off. Travel time outside the regular work shift is not included in hours worked if the employee travels as a passenger. However, driving time is included in hours worked if the employee is required to drive. Any work which an employee is required to perform, even while a passenger, must be counted as hours worked.

24-Hour Duty

Employees required to be on duty for *24 hours or more* are to be compensated for all hours, excluding the time spent during bona fide meal periods and the regularly scheduled sleeping period of not more than 8 hours. If the employee cannot get at least 5 hours sleep during the scheduled period, the entire time must be considered working time. When no agreement exists between the employer and the employee to exclude meal and sleeping periods from time worked, the entire time will be counted as hours worked. Tours of duty of less than 24 hours must count all the time as hours worked.

Waiting Time

Employees on duty are, of course, considered to be working regardless of whether they are actually working or waiting to work. Waiting time off duty depends upon the circumstances of the case. If during the waiting period the employees are completely relieved for a period of time long enough to be used effectively for their own purposes, such waiting time is not counted as hours worked.

Employees required to remain on call at the station or transmitter or nearby so that they cannot use the time effectively for their own purposes must be compensated

for such time. If an employee need only leave work where he or she can be reached, it does not constitute hours worked, even though it might be considered on-call time.

Setting Up Work

Preliminary activity which is closely related to the employee's principal job, and is indispensable to its performance, is counted as hours worked.

Employees Residing on Employer's Premises

An employee who resides on an employer's premises on a permanent basis or for extended periods of time is not considered working all the time spent on the premises. Ordinarily he or she may engage in normal private pursuits with periods of complete freedom, on or off the premises. Any reasonable agreement of the parties which takes into consideration all pertinent facts will be accepted.

8

Overtime Computation

Before overtime compensation at time and one-half for hours worked in excess of 40 each week can be computed, an employee's *regular rate of pay* must first be determined. The regular rate is an hourly rate of pay, computed by dividing all remuneration paid to or on behalf of the employee in any workweek by the total number of hours actually worked in that week. A salary paid monthly or semimonthly must be reduced to a weekly salary before the regular rate for a particular week can be computed.*

The regular rate is more complex than a simple hourly wage for which an employee agrees to work. Commission payments, for example, whether based on a percentage of total sales or of sales in excess of a specified amount, are payments for hours worked and must be included in the regular rate, even when paid in addition to a regular salary. Premium rates of pay for undesirable working conditions or "night shift differentials" must also be added to an employee's regular rate.

*Multiply a monthly salary by 12 and a semimonthly by 24 and then divide that product by 52 weeks to get an employee's weekly wage.

Bonuses

Bonuses are excluded from the regular rate when *not* paid in recognition of services performed during certain periods. The amount and payment must be determined at the sole discretion of the employer, using no particular time schedule and with no previous agreement or prior notice causing employees to expect such payments regularly. Christmas bonuses and other special occasion gifts that are not measured by hours worked, production, or efficiency do not become a part of an employee's wages. Such bonuses may be excluded from the regular rate even if employees have reason to expect them.

Not all bonuses may be excluded from the regular rate, however. When an employer promises an employee a bonus in advance, the prospect of the additional money acts as an incentive for improving the efficiency of work and must therefore be considered a part of the regular rate. Any time a bonus or gift to employees is based on the hours they have worked or the quality of their work, the bonus must be figured in with their regular rate. Likewise, bonuses that are unusually large or come pursuant to a contract or agreement between the employer and the employee become a part of the employee's regular rate, as do any other expenses paid for by the employer that are normally incurred by the employee.

The following items do not usually have to be included in an employee's regular rate:

Gifts. If bestowed on special occasions, as Christmas, and *not* measured by hours worked, production, efficiency, or so substantial that they may be considered as part of the wages.

Profit-Sharing, Thrift and Savings Plans. If the sums are paid pursuant to a bona fide profit sharing or trust or bona fide thrift or savings plan.

Benefit Plans or Trusts. If the employer irrevocably makes these systematic contributions to a trustee or third person according to a bona fide plan for providing old age, retirement, life, accident, health insurance, or similar benefits. The employer should not be able to recapture or divert funds, nor can an employee have the option of taking the benefit in cash, except at the time of severance from the station or the termination of the plan.

Prizes. If the prize is *not* paid to the employee for employment reasons, such as courtesy or attendance, nor for the quality, quantity, or efficiency of work performed during customary working hours or during outside activities considered as within the scope of employment.

Suggestion System Awards. If the award has no re-

lation to the employee's earnings, the program does not require employee participation or have a time limit, and the employee receives no cooperation from management while developing the idea. The solicitation of suggestions from employees should remain general in nature. The employer should have no prior notice of any suggestions that are being developed.

Pay for Hours Not Worked. If the pay is for occasional periods such as vacation, holiday, illness, failure to provide work, reasonable travel expenses, and other expenses incurred in furthering the employer's interest.

Talent Fees

Talent fees are not part of the regular rate if the following conditions are met:

1. Payment must be to an employee having regular duties as a staff performer for services on a particular commercial or sustaining program or series of such programs or commercial spot announcements;

2. Payments must be pursuant to an employment contract or collective bargaining agreement in a specified amount agreed upon in advance;

3. Provided that services described in (1) are performed on a program outside the regular workday or workweek, time worked on the program will not require additional compensation if the employer and employee have agreed in advance that this talent fee includes statutory compensation for the additional work time. Payment must be in addition to the regular and overtime pay called for under the agreement or the law and may not include any payment that can be offset against any compensation otherwise payable to the employee. The talent fee must be sufficient in amount to include the statutory straight time and overtime compensation for the additional time worked in the workweek resulting from the performer's services on such programs;

4. Payment may not be made to persons who do not actually appear on the program, such as scriptwriters, stand-ins or directors, nor to people with such technical responsibilities as engineers, electricians or stage hands.

Premium Rates

Extra compensation provided by premium rates for work on Saturday, Sundays, holidays, or for hours outside the normal workday or workweek is not part of the regular rate when such rates are at least one and one-half times the rate for work performed in nonovertime

hours. Not only can these premium payments be excluded from the regular rate, but they may also be credited to an employee's overtime. However, if these premium or "special day" rates are less than one and one-half times the regular rate, the extra compensation must be included in the regular rate.

Lump Sum Overtime Payments

A premium in the form of a lump sum paid for work performed during overtime hours without regard to the number of overtime hours actually worked does not qualify as an overtime premium even though the amount paid may be equal to or greater than the sum that would have been paid on a per-hour basis. Any such lump sum must be added into an employee's regular rate of pay.

Only the statutory exclusions from the regular rate listed above are authorized by the Act. All other remuneration must be added to the total compensation before the regular hourly rate and the overtime rate for an employee can be computed.

Methods for Computing Overtime

There are several accepted methods for computing overtime, though some have a particularly limited application to broadcasters. Listed below are five basic methods used at radio and television stations. For information concerning other computation methods, write your area Wage and Hour Office for its booklet on overtime computation or contact NAB's Department of Broadcast Management.

Fixed Hourly Rate

This is the simplest method. However, to use this method successfully the employee must understand at the time of employment that he or she will receive a given rate per hour and will be paid *only* for the hours actually worked.

Example: Employee A is paid \$3 per hour and \$4.50 for each hour over 40. If he works 30 hours, he receives \$90 ($30 \times \$3.00 = \90.00); if he works 48 hours, he receives \$156. ($40 \times \$3.00 + 8 \times \$4.50 = \156).

Fixed Salary for Forty-Hour Work Week

This is basically the method described above, except that the employee is paid in full for the week even though less than 40 hours may be worked.

Example: Employee B is paid \$120 per week. If she works 30 hours, she receives \$120; if she works 40 hours, she receives \$120; if she works 48 hours, she receives \$156.

Fixed Salary for Fixed Workweek

This is basically an hourly rate method of payment with the added feature of "preincorporating" the overtime rate into the salary.

Example: Employee C agrees to \$156 for a fixed workweek of 48 hours, understanding that the \$156 includes 40 hours at \$3 per hour and 8 hours at \$4.50 per hour. When he works less than 48 hours, his pay must be reduced accordingly; where he works more than 48 hours, he must receive \$4.50 per hour for each hour worked in excess of 40.

Fixed Salary for a Fluctuating Workweek

This method may be used even though the fluctuation is slight. Its one distinguishing characteristic is that it involves the computation of the regular rate of pay on a week-by-week basis.

Example: Employee D agrees to do the job for \$120 per week, realizing that she may work 35 hours in some weeks and 40 to 50 hours in other weeks. The understanding is that the \$120 covers all straight time pay no matter what hours are involved. When she works 40 hours or less, she receives \$120. When she works 50 hours, she receives \$120 as straight time pay for the 50 hours, but also is owed half time for the 10 overtime hours. This half time rate is determined by dividing the \$120 salary by the 50 hours actually worked. One-half of the resulting \$2.40 regular rate constitutes the premium overtime rate. Keep in mind that it is not 10 hours multiplied by time and one-half the regular rate, but 10 hours multiplied by one-half times the regular rate ($\$1.20$); D would be owed $\$132 (50 \times \$2.40) + (10 \times \$1.20)$ for a 50 hour week. The regular rate is determined on a week-by-week basis by dividing the \$120 salary by the number of hours actually worked each week.

Stations using the fixed salary for a fluctuating workweek method must be alert to the danger of inadvertently falling below the minimum wage requirement. At 60 hours a week, for example, Employee D's regular rate falls to an unacceptable \$2.00 an hour. An employee's salary must always provide compensation at a rate not less than the minimum wage for every hour worked in those workweeks in which the number of hours worked is greatest. In addition all overtime hours must be paid

an additional half the regular rate of pay for that week. Note also that an employee must receive his or her full salary, even when he or she works fewer than 40 hours a week.

A "Fixed Salary for a Fluctuating Workweek Chart" is available from NAB.

"Belo" Contracts

A fixed salary for a fluctuating workweek that *includes* overtime in advance is not permitted except as specified by section 7(f) of the Fair Labor Standards Act. Normally, all compensation under guaranteed salary plans is included in the regular rate. In certain cases in which employees work highly irregular straight time and overtime hours, employers may pay the same total compensation each week to an employee who works overtime and whose hours of work vary from week to week. Such "Belo" contracts give the employee the security of a regular weekly income while helping employers to anticipate in advance part of their overtime labor costs. When neither employee nor employer can control or anticipate with certainty the number of hours an employee will have to work from week to week, a "Belo" contract may be used to include up to 20 hours a week of overtime into the employee's salary.

The agreement must be a weekly guarantee, specifying a regular rate of pay not less than the minimum hourly rate with overtime rates after 40 hours. There is a 60-hour limit on the pay guaranteed by the contract. If the employee works over the number of hours of overtime included in his or her contract on a certain week, additional overtime compensation at time and one-half must be added to the guaranteed amount. In deciding on the amount of overtime to include in the salary guarantee, employers must select a figure low enough to be near the number of overtime hours the employee works in an average week. These agreements must be written down in bona fide contracts. The amount of guaranteed salary must not be subject to proration or deduction in short weeks. To be applicable, the employee's work must necessitate irregular hours, and there must be sufficient irregularity so that in some weeks less than 40 hours is worked and in some weeks the guaranteed number of hours must be exceeded.

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Announcer/Salesperson Overtime Computation

Nonexempt Announcer/Salespersons must be compensated at time and one-half for all hours worked over

40 each week. Time and one-half must be based on a regular weekly rate of pay, inclusive of both selling and announcing earnings.

Where an hourly rate or straight salary is paid for the sales work, the overtime computation is easily solved by the methods referred to on page 9. However, where an Announcer/Salesperson's salary is based on the combination of a standard weekly rate for the announcing, and a commission formula for the outside selling, there are two basic ways to compute the overtime premium:

The Weighted Average Method

The regular weekly rate is determined by dividing the total compensation in the week by the total number of hours worked. The result is the regular rate of pay. One half of this regular rate of pay is owed for each hour worked in excess of 40 per week.

Example: Employee X works 40 hours a week as an Announcer, and ten additional hours that week selling; X receives \$3.00 an hour for announcing, and \$30 in commissions for this particular week. To determine X's regular rate, multiply 40 hours times \$3 and add to this sum the \$30 commission. The total dollar figure is \$150. Divide by 50 (number of hours worked). The resulting regular rate is \$3. One-half of this amount, \$1.50, is owed for each of the ten overtime hours worked. The total compensation for the week is therefore \$165.

Out-of-Shift Method

The Announcer/Salesperson is "pre-paid" the time and one-half for hours worked over 40 each week by allowing broadcasters to build into the out-of-shift commission an overtime formula. However, certain conditions must be met to take advantage of this method.

Example: Employee X performs 40 hours of announcing at \$3.00 an hour, and 10 additional overtime hours of selling; \$30 in commissions is earned in this particular week. Employee X's commission earnings may be based on a formula which states that the in-shift selling (selling within the first 40 hours), for example, carries a 10% commission while out-of-shift selling (selling performed in overtime hours) carries a 15% commission (1-1/2 times the in-shift commission of 10%). Since the overtime is already incorporated into the out-of-shift commission rate, no additional overtime is due this Announcer/Salesperson for the 10 hours of overtime worked.

CONDITIONS: Broadcasters utilizing this out-of-shift compensation method must observe the following criteria:

A. *The Rate Must Be Bona Fide.* If regular salespersons receive the same commission rate that an Announcer/Salesperson receives for out-of-shift selling, the use of this method will not generally be accepted. However, where management has good sales management reasons for using this particular method, its use may be acceptable. For example, if management's policy precludes voluntary Announcer/Salespersons from receiving an equal commission rate, the formula may be accepted. Final approval by the Administrator depends on an analysis of all facts relating to the reason for using a different rate. Where regular salespersons are paid different rates, management has a stronger case for arguing that the out-of-shift rate for Announcer/Salespersons is bona fide. When this rate is used, station records must reflect the base rate, changes in this base rate, and indicate clearly that the time and one-half the base rate is an overtime formula.

B. *The Work for Which the Overtime Rate Is Paid Must Actually Be Out-of-Shift.* Under this condition, this out-of-shift formula may not be used where the split between announcing and selling is even, or in instances where the selling activity is interspread throughout the day among segments of announcing. The clearest example of this condition is the one that involves 40 hours of announcing Monday through Friday and selling on the weekend.

C. *Hours of Actual Work Must Be Controlled.* The problem is distinguishing between selling and nonselling time. Management should be assured that the Announcer/Salesperson's selling activity each week does not exceed a reasonable number of hours. For example, the Announcer/Salesperson should be instructed to put in so many selling hours per week, and no more.

D. *The Minimum Wage Must Be Met.* And, for selling hours over 40, at least one and one-half times the minimum wage must be paid.

business and in complying with other laws and regulations. No particular form of records is required, as long as broadcasters "maintain and preserve basic records of payroll data." With respect to employees subject to both the Act's minimum wage and overtime pay provisions, the following records are required.

1. Name (same used for Social Security records) and home address, including zip code.
2. Birth date if the employee is under 19 years of age.
3. Sex (may be indicated by the use of prefixes Mr., Mrs., Miss or Ms.).
4. Occupation in which employed.
5. Hour and day when workweek begins.
6. Regular hourly pay rate for any week when overtime is worked.
7. Hours worked each workday and total hours worked each workweek.
8. Total daily or weekly straight-time earnings.
9. Total overtime pay for the workweek.
10. Deductions or additions to wages.
11. Total wages paid each pay period.
12. Date of payment and pay period covered.

Records required for persons with bona fide executive, administrative, professional or outside salesperson exemptions differ from records for nonexempt workers. Employers must keep records containing all the information listed above, with the exception of subparagraphs 6 through 10. A statement of the basis on which wages are paid must also be included.

The status of employees who are student-learners, trainees, apprentices or handicapped should be designated in the station records. Any pay arrangements or situations in which board, lodging or other facilities are furnished should also be mentioned in the employee's record.

How Long Must Records Be Kept?

The employee information and payroll data described in the preceding paragraphs (except for number 10), as well as any collective bargaining agreements, plans, trusts, individual or collective employment contracts that affect the application of the Act to employees must be preserved 3 years from the last date of entry. A record of the total sales volume of the station and a record

Recordkeeping

Employers are required to keep records on wages, hours and other items listed in the recordkeeping regulations of the Act. Most of this information is the kind employers usually maintain in the ordinary course of

of the total volume of goods purchased or received during such periods in the form in which the broadcaster usually maintains records in the ordinary course of business must also be kept for 3 years. Copies of the station's Annual FCC Financial Report (FCC Form 324) will satisfy this recordkeeping requirement.

Certain supplementary basic records need only be kept 2 years. These records include time and earning cards, wage rate tables, worktime schedules, order, shipping and billing records, records of additions to or deductions from the wages paid (subparagraph 10), as well as documents that explain the basis for payment of any wage differential between male and female employees at the station.

Employers should keep records safe and accessible at the station, or at one or more established central record-keeping offices if such records are customarily maintained there. Records kept other than at the station should be available within 72 hours following notice from the Administrator or his designated representative, who has the right to inspect and transcribe wage and hour records at any time. Microfilming and punched tape records produced by automatic data processing equipment are acceptable provided adequate viewing facilities are available and the station is prepared, upon request, to make

any conversion, extension, recomputation or transcript of the records.

Posting of Notices

Every radio and television station must post and keep posted notices issued by the Wage and Hour Division advising employees of minimum wage and overtime regulations. These posters should be displayed in conspicuous places at the station so that employees may readily observe them. They may be obtained from area Wage and Hour Division offices or from the NAB.

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Wage and Hour Regional and Area Offices

Ten regional and numerous area Wage and Hour Offices around the country can provide stations with detailed information and useful booklets on every aspect of the Fair Labor Standards Act. The telephone number of the Wage and Hour Office nearest your station is listed in the directory of the city in which the office is located. Look under "United States Government, Department of Labor, Wage and Hour Division."

WAGE AND HOUR OFFICES

<i>State</i>	<i>Region</i>	<i>Area Office</i>
Alabama	Atlanta	Birmingham, Mobile, Montgomery
Alaska	Seattle	Anchorage (field office only)
Arizona	San Francisco	Phoenix
Arkansas	Dallas	Little Rock
California	San Francisco	Hollywood, Los Angeles, Sacramento, San Francisco, Whittier
Colorado	Denver	Denver
Connecticut	Boston	Hartford
Delaware	Philadelphia	Baltimore
District of Columbia	Philadelphia	Hyattsville, Md.
Florida	Atlanta	Jacksonville, Miami, Tampa, Orlando
Georgia	Atlanta	Atlanta, Columbus, Savannah
Hawaii	San Francisco	Honolulu
Idaho	Seattle	Portland, Or.

<i>State</i>	<i>Region</i>	<i>Area Office</i>
Illinois	Chicago	Chicago, Springfield
Indiana	Chicago	Indianapolis, South Bend
Iowa	Kansas City, Mo.	Des Moines
Kansas	Kansas City, Mo.	Wichita
Kentucky	Atlanta	Lexington, Louisville
Louisiana	Dallas	Baton Rouge, New Orleans
Maine	Boston	Portland
Maryland	Philadelphia	Baltimore, Hyattsville
Massachusetts	Boston	Boston, Springfield
Michigan	Chicago	Detroit, Grand Rapids
Minnesota	Chicago	Minneapolis
Mississippi	Atlanta	Jackson
Missouri	Kansas City, Mo.	Kansas City, St. Louis
Montana	Denver	Salt Lake City
Nebraska	Kansas City, Mo.	Omaha
Nevada	San Francisco	Phoenix, Ar.
New Hampshire	Boston	Portland, Me.
New Jersey	New York	Newark, Paterson, Trenton
New Mexico	Dallas	Albuquerque
New York	New York	Albany, Bronx, Brooklyn, Buffalo, New York, Hempstead (L. I.)
North Carolina	Atlanta	Charlotte, Raleigh, Greensboro
North Dakota	Denver	Denver
Ohio	Chicago	Cincinnati, Cleveland, Columbus
Oklahoma	Dallas	Oklahoma City, Tulsa
Oregon	Seattle	Portland
Pennsylvania	Philadelphia	Harrisburg, Philadelphia, Pittsburgh, Wilkes-Barre
Rhode Island	Boston	Providence
South Carolina	Atlanta	Columbia
South Dakota	Denver	Denver
Tennessee	Atlanta	Knoxville, Memphis, Nashville
Texas	Dallas	Dallas, El Paso, Fort Worth, Houston, San Antonio, Waco, Corpus Christi
Utah	Denver	Salt Lake City
Vermont	Boston	Springfield, Ma.
Virginia	Philadelphia	Richmond, Roanoke
Washington	Seattle	Seattle
West Virginia	Philadelphia	Charleston
Wisconsin	Chicago	Madison, Milwaukee
Wyoming	Denver	Salt Lake City
Puerto Rico	New York	Hato Rey, P.R.; Mayaguez, P.R.
Canal Zone	New York	Santurce, P.R.
Virgin Islands		
Guam, Wake Island	San Francisco	Honolulu
American Samoa		

