



June 12, 2019

Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

Re: Regular Rate under the Fair Labor Standards Act (RIN: 1235-AA24)

Dear Docket Officer:

On the behalf of the National Demolition Association (NDA), I am writing to submit the following comments regarding the proposed rule to update the regular rate regulations under the Fair Labor Standards Act (FLSA). NDA represents over 500 U.S. and Canadian companies that offer standard demolition services as well as a full range of demolition-related services and products. NDA educates members on the latest advances in equipment and services, provides educational programs and tools to stay abreast of regulatory and safety matters and keeps regulators informed about issues in our industry. NDA also increases public awareness of the economic and societal benefits of demolition.

The following comments are meant to address many of DOL's questions and proposals:

1. NDA Supports DOL's Proposal on Pay for Forgoing Holidays or Leave

FLSA permits an employer to exclude "payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause" from the regular rate. The regulations treat such payments as excludable from the "regular rate" as they are not compensation for hours worked.¹ In addition, extra payments made for working on a holiday or vacation are excluded from the regular rate. NDA supports DOL's proposal to make all forms of leave from the workplace as part of the regular rate.

2. NDA Supports DOL's Proposal on Compensation for Bona Fide Meal Periods

NDA supports DOL's proposal to eliminate any presumption that the payment of a bona fide meal period makes the meal period hours to be "hours worked".

3. NDA Supports DOL's Proposal on Reimbursable Expenses & "Other Similar Payments"

NDA supports DOL's decision to use the Federal Travel Regulation as a standard of *per se* reasonableness, however, many employers use the Internal Revenue Service's (IRS) guidelines for reimbursement of employee travel expense. Therefore, DOL should clarify that reimbursement payment following the IRS's guidelines is *per se* reasonable.

In addition, NDA supports DOL's proposal to exclude a wide variety of benefits-type payments from the regular rate calculation. These benefits do not vary based on hours of work and DOL's clarification that the regular rate should exclude payments unconnected to an employee's hours worked, services rendered, job performance, credentials, or other criteria linked to the quality or quantity of the employee's work will give employers additional certainty that will permit them to provide these benefits to employees with increased frequency.

4. NDA Supports Clarification of Excludable Benefits Under Section 7(e)(4)

¹ 29 CFR 778.218

DOL should clarify its position on the provision of cash in-lieu of benefits for employees subject to the Service Contract Act (SCA) or Davis-Bacon Act (DBA) with the provision of cash in-lieu of benefits for employees not subject to those laws. DOL should treat non-SCA and non-DBA covered employees similarly, and, where an employer has an actual benefits plan, and an employee chooses to opt-out of that plan and is provided a cash payment instead, those cash payments should be excluded from the regular rate.

Conclusion

Thank you for the opportunity to provide comment on this issue. Please contact Kevin McKenney at kmckenney@demolitionassociation.com or 202-367-2480 with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Lambert", written in a cursive style.

Jeff Lambert
Chief Executive Officer