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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

ADMINISTRATOR ISSUES REVISED RECORD-KEEPING REGULATIONS

Rules Simplified Under Which 250,000 Employers Must Keep Payrolls
of 15,500,000 Workers

Revision of the record-keeping regulations under which 250,000 employers must keep payroll and other records concerning more than 15,500,000 workers was announced today by General Philip B. Flaming, Administrator of the Wage and Hour Division, U. S. Department of Labor. The new regulations in several instances simplify present requirements. In others, they call for the recording of additional information. They apply to all employers who have employees engaged in interstate commerce or in the production of goods for interstate commerce.

"About one-fourth of the 45,000 inspections we make in the last fiscal year showed employers in technical violations of the Act through failure to keep prescribed records," General Flaming said. "Our requirements in the matter of payroll records are very simple. No special order or form of records has been required or is required in the new regulations. However, we must have accurate information on the number of hours employees have worked. Employers paying on a salary, piece work, or other production basis have in every case failed to realize this. An important part of the work of our men on inspections is attention in the matter of keeping payroll records to satisfy the purposes of this law."

A new requirement of the regulations is that "each employer shall . . . preserve for at least two years from the last date of entry the original or true copy of any and all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading, and all billings to customers (other than 'cash') which the employer retains or uses in the course of his business or operations." Preservation of these records is required to enable Wage and Hour inspectors to determine if the Act applies at any given time. (9040)

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The revision of the regulations published today resulted from petitions filed by large employers, among them the American Telephone and Telegraph Company, the Association of American Railroads, the Westinghouse Company, and the Comptrollers Institute of America. Hearings were held in Washington on October 17 and 18, 1940, and on May 12 and 13, 1941. Many of the employers attending the hearings asked for changes which would simplify payroll records of corporations paying semi-monthly instead of weekly. As the 40 hour workweek is the unit of the Wage and Hour law, the Division's record-keeping regulations had required recording of total hours worked each day and each workweek and total straight time compensation for each week. The requirement of a record of weekly earnings did not mean that the employer had to pay his employees each week. However, some large employers petitioned that recording of weekly as well as semi-monthly earnings would be a costly and an unnecessary addition to bookkeeping. As a result, employers paying on a semi-monthly basis may record daily instead of total weekly straight-time earnings. As to hours, daily and total weekly recording is still required by the regulations. Daily hours may be recorded by entering starting and stopping time.

The Administrator's authority in prescribing what records are to be kept is contained in section 11 (e) of the act. "Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder."

An explanatory bulletin issued with the new record-keeping regulations points out that compliance with these regulations does not relieve the employer of the record-keeping requirements of other federal agencies such as those of the Bureau of Internal Revenue in the matter of Social Security taxation or state or municipal regulations. "In some instances," the bulletin states, "there are differences in

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Record keeping requirements provided under state and municipal wage and hour acts, ordinances or orders and those provided in the Record Keeping Regulations issued under the Fair Labor Standards Act. These differences primarily arise from differences in the basic provisions of the acts, ordinances or orders under which these agencies operate, such as, provision for the establishment of piece rates or minimum weekly wages; limiting daily or weekly hours of work; prohibiting the employment of women or minors in certain occupations or industries.

Likewise in some instances other federal agencies, such as the Bituminous Coal Commission, the Interstate Commerce Commission, the Bureau of Internal Revenue (social security function) may require the keeping of certain records not required by these Regulations or the submission of separate reports to them.

"Since there are these many differences between the minimum wage, maximum hour and employment requirements provided in the Fair Labor Standards Act and those provided in other acts, ordinances and orders, the Wage and Hour Division Record Keeping Regulations (Part 516) may vary in several important regards from those required by other agencies. Where this is true, the employer is not relieved of the requirements of these other agencies by keeping or maintaining records as herein required."

The Bulletin emphasizes that there is no requirement to keep records in any specified form. "The requirement," according to the bulletin, "is that the employer maintain records which contain the information and data named or listed. This permits the employer considerable latitude in the order, form, and extent of his records.

"Likewise, there is no requirement that all information and data be carried, item by item, on each payroll. Some employers carry on the payrolls all the information and data required. Still others carry on the payrolls total figures on hours worked, wages received and deductions made for each employee. Individual employee personnel records, currently maintained, contain the details on name, employee symbol or number, age (if known), occupation and other related

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general information; while individual time or work cards or worktime sheets show the detail of daily and weekly hours worked, salary, hourly rates, piece rates or other rate basis and weekly straight-time earnings and overtime excess compensation. Still other records may furnish the detail on additions to or deductions from wages due. There is no requirement that all such information and detail shall be maintained on one payroll. The information and data, however, must be contained in some legible records."

Many of the other provisions in the new regulations are the result of two years' inspection experience and examination of the payrolls of thousands of establishments.

Although executive, administrative, professional employees and outside salesmen are not within the wage and hour requirements of the law, the regulations require among other things that a record be kept of the total wages or salaries paid them each pay period and show the basis on which such wages or salaries are paid. Current regulations require only recording of the name, address, and occupation of such employees.

All additions to or deductions from each wage for rent, company store purchases, etc., may be recorded on a pay period basis where they do not affect minimum wage or overtime payments. Where they do affect such payments of at least the minimum or overtime payments, they must be recorded on a weekly basis and employers must preserve "all records used . . . in determining the original cost, operating and maintenance cost, and depreciation and interest charges." Such records must be preserved two years.

Additional record-keeping is required of establishments claiming exceptions from the 40 hour week as processors of agricultural products or industries of a "seasonal" nature. Packing and similar establishments claiming the two 16-week exceptions from the 40 hour week available to them must post a notice at the end of each pay period stating which type of exception they were operating under for the period. Reason for this is that while one type of exception is an unlimited release from the 40 hour week, the other calls for payment of time and a half

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after 12 hours a day and 40 hours a week. Further, workers employed when neither of the exceptions are in effect are entitled to time and a half after 40 hours. Such a notice also must be posted to show certain interested employees when an exception from the 40 hour week is claimed by establishments handling, slaughtering, or dressing poultry or livestock.

The regulations are further extended by the requirement that employers within the coverage of the act, because of the interstate nature of their business, record the name, address, occupation, and place of employment, also date of birth if under 19, of employees except from both the minimum wage and the 40 hour week under Section 13 of the act. Such employees include all those of local retail and service establishments; seamen; employees of airlines; employees in the fish industry; agricultural workers; employees of small weekly or semi-weekly newspapers; employees of local traction enterprises; employees of small establishments processing certain agricultural commodities; employees of country telephone exchanges of less than 500 stations.

Other sections of the regulations prescribe the data to be kept by railroads in their employment of red cross and other employees under the act whose employees depend upon tips as part of their wages.

Still another section prescribes the data which must be kept by those who send goods destined for interstate commerce to workers in towns for any processing such as readywork or marketing small articles in sales circles. Where such work is sent out it is the position of the Division that the firm sending out the work is an employer and the person doing the work is an employee. In the case of those industrial handworkers, additional records must be kept by the home worker. These are kept in a booklet booklet supplied by the Wage and Hour Division to such employers.

Provision is made in the regulations to allow employers with special problems to keep their records otherwise in a manner satisfactory to the Administrator upon petition and receipt of authority from him.

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