

CHAPTER 190
WAGE PAYMENTS

347—217.1 Reserved.

347—217.2(91D) Purpose and scope. This chapter addresses the definition of wages. “Wages” include the “reasonable cost,” as determined by the commissioner, to an employer of furnishing any employee with board, lodging, or other facilities, if the board, lodging, or other facilities are customarily furnished by the employer to employees. In addition, the commissioner will determine the “fair value” of the facilities on the basis of average cost to the employer or to groups of employers similarly situated, on average value to groups of employees, or other appropriate measures of “fair value.” Whenever determined and when applicable and pertinent, the “fair value” of the facilities involved shall be includable as part of “wages” instead of the actual measure of the costs of those facilities. However, the cost of board, lodging, or other facilities shall not be included as part of “wages” if excluded therefrom by a bona fide collective bargaining agreement.

SOURCE: 29 CFR 531.2.

347—217.3(91D) “Reasonable cost.”

217.3(1) “Reasonable cost” is determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by the employer to the employees.

217.3(2) “Reasonable cost” does not include a profit to the employer or to any affiliated person.

217.3(3) Except whenever any determination made under rule 217.4(91D) is applicable, the “reasonable cost” to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5½ percent) for interest on the depreciated amount of capital invested by the employer. If the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this rule, the term “good accounting practices” does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term “depreciation” includes obsolescence.

217.3(4) The cost of furnishing “facilities” found by the commissioner to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not be included in computing wages.

The following is a list of facilities found by the commissioner to be primarily for the benefit or convenience of the employer. The list is intended to be illustrative rather than exclusive:

- a. Tools of the trade and other materials and services incidental to carrying on the employer’s business.
- b. The cost of any construction by and for the employer.
- c. The cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

SOURCE: 29 CFR 531.3.

347—217.4(91D) Determinations of “reasonable cost.”

217.4(1) Procedure. Upon the commissioner’s own motion or upon the petition of any interested person, the commissioner may determine generally or particularly the “reasonable cost” to an employer of furnishing any employee with board, lodging, or other facilities, if the board, lodging, or other facilities are customarily furnished by the employer to employees. Notice of proposed determination shall be published in the Iowa Administrative Bulletin as a Notice of Intended Action.

217.4(2) *Contents of petitions submitted by interested persons.* Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of “reasonable cost” shall include the following information:

- a. The name and location of the employer’s or employers’ place or places of business;
- b. A detailed description of the board, lodging, or other facilities furnished by the employer or employers, whether or not these facilities are customarily furnished by the employer or employers, and whether they are alleged to constitute “wages”;
- c. The charges or deductions made for the facility or facilities by the employer or employers;
- d. When the actual cost of the facility or facilities is known, an itemized statement of the cost to the employer or employers of the furnished facility or facilities;
- e. The cash wages paid;
- f. The reason or reasons for which the determination is requested, including any reason or reasons why the determinations in 217.3(91D) should not apply; and
- g. Whether an opportunity to make an oral presentation is requested; and, if it is requested, the inclusion of a summary of any expected presentation.

SOURCE: 29 CFR 531.4.

347—217.5(91D) Determinations of “fair value.”

217.5(1) *Procedure.* The procedures governing the making of determinations of the “fair value” of board, lodging, or other facilities for defined classes of employees and in defined areas under the definition of wage shall be the same as that prescribed in rule 217.4(91D) with respect to determinations of “reasonable cost.”

217.5(2) *Petitions of interested persons.* Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of “fair value” shall contain the information required under 347—subrule 215.3(23) and, to the extent possible, the following:

- a. A proposed definition of the class or classes of employees involved;
- b. A proposed definition of the area to which any requested determination would apply; and
- c. Any measure of “fair value” of the furnished facilities which may be appropriate in addition to the cost of such facilities.

SOURCE: 29 CFR 531.5.

347—217.6(91D) Effects of collective bargaining agreements.

217.6(1) The cost of board, lodging, or other facilities shall not be included as part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

217.6(2) A collective bargaining agreement shall be deemed to be “bona fide” when it is made with a labor organization.

- a. Which has been certified by the National Labor Relations Board, or Iowa public employment relations board, or
- b. Which is the certified representative of the employees under the provisions of the National Labor Relations Act, as amended, the Railway Labor Act, as amended, or Iowa Public Employment Relations Act.

217.6(3) Collective bargaining agreements made with representatives who have not been so certified will be ruled on individually upon submission to the commissioner.

SOURCE: 29 CFR 531.6.

347—217.7(91D) Request for review of tip credit.

217.7(1) Any employee (personally or through a representative) may request the commissioner to determine whether the actual amount of tips received is less than the amount determined by the em-

ployer as a wage credit. If the commissioner is satisfied the actual amount of tips is the lesser of these amounts, the amount paid the employee by the employer shall be deemed to have been increased by such lesser amount.

217.7(2) Requests for review and determination may be made in writing to the commissioner. Requests should be accompanied by a statement of tips received each week or each month over a representative period as reported by the employee to the employer for purposes of Internal Revenue Service reports. A request should also be accompanied by a statement showing the tip credit taken by the employer and any other information deemed pertinent by the petitioner. In any instance in which it appears that the tip credit claimed by the employer exceeds the amount of tips actually received by the tipped employee, the employer shall be apprised of the facts made available to the commissioner and be afforded the opportunity to submit any evidence the employer may care to present in support of the claim for tip credit before a determination is made.

SOURCE: 29 CFR 531.7.

347—217.8 to 217.24 Reserved.

347—217.25(91D) Introductory statement.

217.25(1) Reserved.

217.25(2) The interpretations of the law contained in this chapter are official interpretations of the division with respect to the application under described circumstances of the provisions of law which they discuss. The interpretations indicate with respect to the methods of paying the compensation required and the application of the law.

SOURCE: 29 CFR 531.25.

347—217.26 Reserved.

347—217.27(91D) Payment in cash or its equivalent required. Payments of the prescribed wages shall be in currency or negotiable instrument payable at par. Although these rules provide for the inclusion in the “wage” paid to any employee, under the conditions which it prescribes of the “reasonable cost,” or “fair value” of furnishing the employee with board, lodging, or other facilities, the employer can only include the furnishing of facilities as a portion of the prescribed wage if the employee has agreed in writing prior to the period of employment for which payment will be made to receive payment in a form other than currency or negotiable instrument payable at par. In addition, a tipped employee’s wages may consist in part of tips. These rules permit and govern the payment of wages in other than cash.

SOURCE: 29 CFR 531.27.

347—217.28 Reserved.

347—217.29(91D) Board, lodging, or other facilities. The inclusion of board, lodging and other facilities as part of wages applies under the following situations:

217.29(1) Where board, lodging, or other facilities are furnished in addition to a stipulated wage; and

217.29(2) Where charges for board, lodging, or other facilities are deducted from a stipulated wage. The use of the word “furnishing” clearly indicates this was intended to apply to all facilities furnished by the employer as compensation to the employee, regardless of whether the employer calculates charges for the facilities as additions to or deductions from wages.

SOURCE: 29 CFR 531.29.

347—217.30(91D) “Furnished” to the employee. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where customarily “furnished” to the employee. Not only shall the employee receive the benefits of the facility for which the employee is charged, but it is essential that the employee’s acceptance of the facility be voluntary and uncoerced.

SOURCE: 29 CFR 531.30.

347—217.31(91D) “Customarily” furnished. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where “customarily” furnished to the employee. Where facilities are “furnished” to the employee, it will be considered a sufficient satisfaction of this requirement if the facilities are furnished regularly by the employer to the employer’s employees or if the same or similar facilities are customarily furnished by other employers engaged in the same or similar trade, business, or occupation in the same or similar communities.

SOURCE: 29 CFR 531.31.

347—217.32(91D) “Other facilities.”

217.32(1) “Other facilities,” as used in this chapter, shall be something similar to board or lodging. The following items are deemed to be within the meaning of the term:

- a. Meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees;
- b. Meals, dormitory rooms, and tuition furnished by a college to its student employees;
- c. Housing furnished for dwelling purposes;
- d. General merchandise furnished without cost to the employee at company stores and commissaries (including articles of food, clothing, and household effects);
- e. Fuel (including coal, kerosene, firewood, and lumber slabs), electricity, water, and gas furnished for the noncommercial personal use of the employee; and
- f. Transportation furnished employees between their homes and work where the travel time does not constitute compensable hours worked and the transportation is not an incident of and necessary to the employment.

217.32(2) Shares of capital stock in an employer company, representing only a contingent proprietary right to participate in profits and losses or in the assets of the company at some future dissolution date, are not “facilities.”

217.32(3) The cost of furnishing “facilities” which are primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages. Items in addition to those set forth in rule 217.3(91D) which are primarily for the benefit or convenience of the employer and are not therefore to be considered “facilities” include:

- a. Safety caps, explosives, and miners’ lamps (in the mining industry);
- b. Electric power (used for commercial production in the interest of the employer);
- c. Company police and guard protection;
- d. Taxes and insurance on the employer’s buildings which are not used for lodgings furnished to the employee;
- e. Dues to chambers of commerce and other organizations used, for example, to repay subsidies given to the employer to locate a factory in a particular community;
- f. Transportation charges where the transportation is an incident of and necessary to the employment (as in the case of maintenance-of-way employees of a railroad);
- g. Charges for rental of uniforms where the nature of the business requires the employee to wear a uniform; and

h. Medical services and hospitalization which the employer is bound to furnish under workers' compensation acts, or similar law.

217.32(4) Meals are always regarded as primarily for the benefit and convenience of the employee.

SOURCE: 29 CFR 531.32.

347—217.33 and **217.34** Reserved.

347—217.35(91D) “Free and clear” payment; “kickbacks.” Whether in cash or in facilities, “wages” cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or “free and clear.” The wage requirements will not be met where the employee “kicks back” directly or indirectly to the employer or to another person for the employer’s benefit the whole or part of the wage delivered to the employee. This is true whether the “kickback” is made in cash or in other than cash.

SOURCE: 29 CFR 531.35.

347—217.36(91D) Payment where additions or deductions are involved.

217.36(1) This chapter applies only to the applicable minimum wage for all hours worked. Any deduction indicated in this chapter as being permitted must meet the requirements of Iowa Code section 91A.5.

To illustrate, where an employee works 40 hours a week at a cash wage rate of \$3.85 an hour and is paid \$154 in cash free and clear at the end of the workweek, and in addition is furnished facilities valued at \$10, no consideration need be given to the question of whether the facilities meet the requirements, since the employee has received in cash the applicable minimum wage of \$3.85 an hour for all hours worked. Similarly, where an employee is employed at a rate of \$5 an hour and during a particular workweek works 40 hours for which cash payment of \$200 is made, the employer having deducted \$30 from wages for facilities furnished, whether the deduction meets the requirement of this chapter need not be considered, since the employee is still receiving, after the deduction has been made, a cash wage in excess of the required minimum hourly wage.

Deductions for board, lodging, or other facilities may be made in workweeks even if the deductions reduce the cash wage below the minimum, provided the prices charged do not exceed the “reasonable cost” of the facilities. When items are furnished the employee at a profit, the deductions from wages are considered to be illegal only to the extent that the profit reduces the wage (which includes the “reasonable cost” of the facilities) below the required minimum.

217.36(2) Deductions for articles such as tools, miners’ lamps, dynamite caps, and other items which do not constitute “board, lodging, or other facilities” may likewise be made if the employee nevertheless received the required minimum wage in cash free and clear; but to the extent that they reduce the wages of the employee in any such workweek below the minimum required, they are illegal. However, any deduction indicated as being permitted must meet the requirements of Iowa Code section 91A.5.

SOURCE: 29 CFR 531.36.

347—217.37(91D) Offsets. An employer shall not use any portion of an employer’s current or future earnings to offset past minimum wage obligations or payments.

347—217.38(91D) Amounts deducted for taxes. Taxes which are assessed against the employee and which are collected by the employer and forwarded to the appropriate governmental agency may be included as “wages” although they do not technically constitute “board, lodging, or other facilities.”

This principle is applicable to the employee's share of social security, as well as other federal, state, or local taxes, levies, and assessments. No deduction may be made for any tax or share of a tax which the law requires to be borne by the employer.

SOURCE: 29 CFR 531.38.

347—217.39(91D) Payments to third persons pursuant to court order.

217.39(1) Where an employer is legally obliged, as by order of a court of competent and appropriate jurisdiction, to pay a sum for the benefit or credit of the employee to a creditor of the employee, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceeding, deduction from wages of the actual sum so paid is not prohibited: provided that neither the employer nor any person acting in the employer's behalf or interest derives any profit or benefit from the transaction. In those cases, payment to the third person for the benefit and credit of the employee will be considered equivalent, for the purposes of this chapter, to payment to the employee.

217.39(2) The amount of any individual's earnings withheld by means of any legal or equitable procedure for the payment of any debt may not exceed the restriction imposed by state or federal garnishment laws; Iowa Code section 642.21(1989) or the federal Consumer Protection Act, Title III, 15 U.S.C. Sections 1671-1677(1982).

SOURCE: 29 CFR 531.39.

347—217.40(91D) Payments to employee's assignee.

217.40(1) Where an employer is directed by a voluntary assignment or order of an employee to pay a sum for the benefit of the employee to a creditor, donee, or other third party, deduction from wages of the actual sum so paid is not prohibited: Provided, that neither the employer nor any person acting in the employer's behalf or interest, directly or indirectly, derives any profit or benefit from the transaction. In those cases, payment to the third person for the benefit and credit of the employee will be considered equivalent, for purposes of this chapter, to payment to the employee. Any payments to employee's assignees must be pursuant to a written authorization by the employee.

217.40(2) No payment by the employer to a third party will be recognized as a valid payment of compensation where it appears that payment was part of a plan or arrangement to evade or circumvent the requirements of this chapter.

SOURCE: 29 CFR 531.40.

347—217.41 to 217.49 Reserved.

347—217.50(91D) Payments to tipped employees.

217.50(1) In determining the wage of a tipped employee, the amount paid to a tipped employee by the employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 40 percent of the applicable minimum wage rate, except that in the case of an employee who (either personally or acting through a representative) shows to the satisfaction of the commissioner that the actual amount of tips received was less than the amount determined by the employer as the amount by which the wage paid the employee was deemed to be increased under this sentence, the amount paid the employee by the employer shall be deemed to have been increased by the lesser amount.

217.50(2) "Tipped employee" means any employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips.

SOURCE: 29 CFR 531.50.

347—217.51(91D) Conditions for taking tip credits in making wage payments. The wage credit permitted on account of tips may be taken only with respect to wage payments made under Iowa Code

section 91D.1(1) “c” to those employees whose occupations in the workweeks for which the payments are made are those of “tipped employees.” To determine whether a tip credit may be taken in paying wages to a particular employee it is necessary to know what payments constitute “tips,” whether the employee receives “more than \$30 a month” in tipped payments in the occupation in which the employee is engaged, and whether in the occupation the employee receives these payments in the amount “customarily and regularly.” The principles applicable to a resolution of these questions are discussed in rules 217.52(91D) to 217.59(91D).

SOURCE: 29 CFR 531.51.

347—217.52(91D) General characteristics of “tips.” A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. The payment is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally the customer has the right to determine who shall be the recipient of the gratuity. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. Only tips actually received by an employee as money belonging to that employee, which the employee may freely use absent of any control by the employer, may be counted in determining whether the employee is a “tipped employee” and in applying the provisions which govern wage credits for tips.

SOURCE: 29 CFR 531.52.

347—217.53(91D) Payments which constitute tips. In addition to cash sums presented by customers which an employee keeps, tips received by an employee include amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money or its equivalent as above described such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of this chapter.

SOURCE: 29 CFR 531.53.

347—217.54(91D) Tip pooling. Where employees practice tip splitting, as where food servers give a portion of their tips to the busers, both the amounts retained by the food servers and those given the busers are considered tips of the individuals who retain them. Similarly, where an accounting is made to an employer for information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each employee as the individual’s own are counted as the employee’s tips.

SOURCE: 29 CFR 531.54.

347—217.55(91D) Examples of amounts not received as tips.

217.55(1) A compulsory charge for service, such as 15 percent of the amount of the bill, imposed on a customer by an employer’s establishment, is not a tip and, even if distributed by the employer to employees, cannot be counted as a tip received. Similarly, where negotiations between a hotel and a customer for banquet facilities include amounts for distribution to employees of the hotel, the amounts so distributed are not counted as tips received. Likewise, where the employment agreement is such that amounts presented by customers as tips belong to the employer and must be credited or turned over to the employer, the employee is in effect collecting for the employer additional income from the operations of the latter’s establishment. Even though the amounts are not collected by imposition of any

compulsory charge on the customer, plainly the employee is not receiving tips. The amounts received from customers are the employer's property, not the employee's, and do not constitute tip income to the employee.

217.55(2) Service charges and other similar sums which become part of the employer's gross receipts are not tips. However, where the sums are distributed by the employer to the employees, the amounts may be used in their entirety to satisfy the monetary requirements of this chapter. Also, if pursuant to an employment agreement the tips received by an employee must be credited or turned over to the employer, the sums may, after receipt by the employer, be used by the employer to satisfy the monetary requirements of this chapter. In those instances, there is no applicability of the 40 percent limitation on tip credits provided by Iowa Code section 91D.1(1)"c."

SOURCE: 29 CFR 531.55.

347—217.56(91D) "More than \$30 a month in tips."

217.56(1) *Tipped employee.* An employee is a "tipped employee" when, in the occupation in which the employee is engaged, the amounts the employee receives as tips customarily and regularly total "more than \$30 a month." An employee employed in an occupation in which the tips received meet this minimum standard is a "tipped employee" for whom the wage credit provided by 347—sub-rule 215.3(23) may be taken in computing the compensation due the employee for employment in the occupation, whether the employee is employed in it full-time or part-time. An employee employed full-time or part-time in an occupation in which the employee does not receive more than \$30 a month in tips customarily and regularly is not a "tipped employee" and must receive the full compensation required without any deduction for tips received.

217.56(2) *Month.* The definition of tipped employee does not require that the calendar month be used in determining whether more than \$30 a month is customarily and regularly received as tips. Any appropriate recurring monthly period beginning on the same day of the calendar month may be used.

217.56(3) *Individual tip receipts are controlling.* An employee must customarily and regularly receive more than \$30 a month in tips in order to qualify as a tipped employee. An employee who is part of a group which has a record of receiving more than \$30 a month in tips will not qualify that employee. For example, a food server who is newly hired will not be considered a tipped employee merely because the other food servers in the establishment receive tips in the requisite amount. The method of applying the test in initial and terminal months of employment is addressed in rule 217.58(91D).

217.56(4) *Significance of minimum monthly tip receipts.* More than \$30 a month in tips customarily and regularly received by the employee is a minimum standard that must be met before any wage credit for tips is determined.

217.56(5) *Dual jobs.* In some situations an employee is employed in a dual job, as for example, where a desk clerk in a hotel also serves as a food server. If the employee customarily and regularly receives at least \$30 a month in tips for work as a food server, the employee is a tipped employee only with respect to the employment as a food server. The employee is employed in two occupations, and no tip credit can be taken for hours of employment in the occupation for which the employee does not meet the tip qualification. The situation is distinguishable from that of a food server who spends part of the time cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses. The related duties in an occupation that is a tipped occupation need not by themselves be directed toward producing tips.

SOURCE: 29 CFR 531.56.

347—217.57(91D) Receiving the minimum amount "customarily and regularly." The employee must receive more than \$30 a month in tips "customarily and regularly" in the occupation in which the employee is engaged in order to qualify as a tipped employee. If it is known that the employee always receives more than the stipulated amount each month, as may be the case with many employees in occupations such as those of food server, bellhop, taxicab driver, barber, or beautician, the employee will qualify and the tip credit provisions may be applied. Alternatively, an employee who only occasionally

or sporadically receives tips totaling more than \$30 a month, such as at holidays when customers may be more generous than usual, will not be deemed a tipped employee. The phrase “customarily and regularly” signifies a frequency which must be greater than occasional, but which may be less than constant. If an employee is in an occupation in which the employee normally and recurrently receives more than \$30 a month in tips, the employee will be considered a tipped employee even though occasionally because of sickness, vacation, seasonal fluctuations or the like, the employee fails to receive more than \$30 in tips in a particular month.

SOURCE: 29 CFR 531.57.

347—217.58(91D) Initial and terminal months. An exception to the requirement that an employee, whether full-time, part-time, permanent or temporary, will qualify as a tipped employee only if the employee customarily and regularly receives more than \$30 a month in tips is made in the case of initial and terminal months of employment. In those months the purpose of the provision for tipped employees would seem fulfilled if qualification as a tipped employee is based on receipt of tips in the particular week or weeks of the month at a rate in excess of \$30 a month, where the employee has worked less than a month because employment started or terminated during the month.

SOURCE: 29 CFR 531.58.

347—217.59(91D) The tip wage credit. In determining compliance with the wage payment requirements, the amount paid to a tipped employee by an employer is deemed to be increased on account of tips by an amount which cannot exceed 40 percent of the minimum wage applicable to the employee in the workweek for which the wage payment is made. This credit is in addition to any credit for board, lodging, or other facilities which may be allowable. The credit allowed on account of tips may be less than 40 percent of the applicable minimum wage; it cannot be more. The actual amount shall be determined by the employer on the basis of the employer’s information concerning the tipping practices and receipts in the establishment. However, an employee who can show to the satisfaction of the commissioner that the actual amount of tips received was less than the amount determined by the employer as a tip credit shall receive an appropriate wage adjustment. It is presumed that in the application of this special provision the employee will be receiving at least the maximum tip credit in actual tips. If the employee is receiving less than the amount credited, the employer is required to pay the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips. An employee may request review of tip credit determinations made by employers, in the event that the employee considers that the tip credit taken exceeds actual tips. The tip credit may be taken only for hours worked by the employee in an occupation in which the employee qualifies as a tipped employee. Under employment agreements requiring tips to be turned over or credited to the employer to be treated by the employer as part of gross receipts, the employer shall pay the employee the full minimum hourly wage, since for all practical purposes the employee is not receiving tip income.

SOURCE: 29 CFR 531.59.

347—217.60 Reserved.

These rules are intended to implement Iowa Code chapter 91D.

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