

Don't Overlook Overtime

What employers should know about overtime requirements under the Fair Labor Standards Act

As an employer, few expenses impact your weekly bottom line more directly than your staffing budget. You draft your schedule with care, assign the hours you expect your staff to work, and forecast what that will mean to your weekly payroll. Of all the factors that can impact your total expenditures, overtime is among those that can make the biggest difference in the shortest amount of time. Understanding and complying with federal labor regulations regarding overtime under the Fair Labor Standards Act (FLSA) is a critical piece of your payroll puzzle.

The DOL's Wage and Hour Division has found violations of the FLSA among employers nationwide. Many of these violations have resulted from employers failing to pay employees proper overtime when they work over 40 hours in a workweek. When such violations are disclosed, employers pay back wages to employees and risk exposure to additional damages and penalties.

The Wage and Hour Division enforces the FLSA, the federal law that provides minimum wage, overtime, child labor, and recordkeeping requirements for covered employers in the U.S. Determining which employees are due overtime, when they are due overtime, and how much overtime they are due requires a clear understanding of the law. Unless a specific exemption applies, employees must be paid at least the federal minimum wage of \$7.25 per hour and ***overtime at time-and-one-half their regular rate of pay for any hours worked in excess of 40 hours in a workweek***. Employees who do not qualify for an exemption and are therefore entitled to overtime pay are commonly referred to as "non-exempt" employees, while those who do qualify for an exemption from overtime pay are referred to as "exempt" employees.

Some of the most frequent problem areas identified that lead to violations of the overtime requirements include:

- 1) Paying "straight time" rates for hours worked beyond 40 per workweek;
- 2) Failing to combine hours worked at two or more locations owned by the same enterprise for overtime calculation purposes (for example, paying an employee for 25 hours worked at Store A at straight time in one check, and for another 25 hours worked at Store B at straight time in another check);
- 3) Averaging workweeks (for example, paying overtime after 80 hours in two weeks, instead of after 40 hours in one week);
- 4) Failing to include bonus and other payments in employees' regular rates when calculating overtime compensation; and
- 5) Failing to record all hours worked, improperly decreasing employees' total hours below 40 when they really worked more than 40 hours and are due overtime.

OVERTIME PRINCIPLES:

If a non-exempt employee works more than 40 hours in a workweek, the employer has to pay 1.5 times that employee's **regular rate** of pay for every hour worked past 40.

EXAMPLE:

An employee makes \$10.00 per hour. The employee works 41 hours in a workweek.

The employee is due:

41 hours x \$10.00 per hour =	\$410.00
1 hour overtime premium @ (\$10.00) x (0.5) =	\$5.00
Total compensation due =	\$415.00

Employers with more than one location should be aware that for an employee working at multiple sites, the employer needs to total all hours worked by the employee in the workweek, at all locations, to determine if overtime is due.

EXAMPLE:

An employer owns and operates 5 restaurants. During the workweek, an employee worked the following schedule:

Store A:	20 hours
Store B:	15 hours
Store C:	10 hours
Total:	45 hours

The employee is due 5 hours of overtime for the workweek. Even if the stores have their payrolls set up separately, all hours worked during the workweek must be combined to determine if overtime is due.

The FLSA and its overtime requirements apply *on a workweek basis*. An employee's workweek is a fixed and regularly-recurring period of seven consecutive 24-hour periods. The workweek may begin on any day and at any hour of the day. If more than 40 hours are worked during this 7-day period by a non-exempt employee, overtime is due.

Averaging of hours over two or more weeks is not permitted. This means that employers cannot choose to pay overtime only when an employee exceeds 80 hours in two weeks, instead of when they work beyond 40 hours in one week. Even if payroll is run every two weeks, hours worked must be totaled separately for each workweek, and overtime must be paid when an employee's workweek goes over 40 hours.

EXAMPLE:

An employer pays employees every two weeks. An employee works the following numbers of hours:

Week 1: 45 hours

Week 2: 20 hours

Total: 65 hours

The employee is due 5 hours of overtime for Week 1.

An employee's **regular rate**, upon which overtime must be computed, includes all wages for employment, except certain payments excluded by the FLSA - such as gifts, holiday bonuses, and reimbursements for expenses. Production bonuses and food allowances, which are non-discretionary, are payments for employment, and *must be included in the employee's regular hourly rate for overtime computation purposes.*

EXAMPLE:

An employee earns \$10.00 per hour

The employee works 50 hours in a workweek

The employee earns a \$50.00 production bonus during that workweek

The employee's "regular rate" is computed as follows:

50 hours at the employee's hourly rate:	50 hours x \$10.00 =	\$500.00
+ The production bonus:		<u>\$50.00</u>
TOTAL STRAIGHT TIME EARNINGS due, before overtime:		\$550.00

Divide total straight time earnings by number of hours worked:

$\$550.00 / 50 \text{ hours} = \mathbf{\$11.00/hr \text{ regular rate}}$

(The bonus has the effect of increasing the employee's actual hourly rate by \$1.00/hour)

\$550 earned at straight time / 50 total hours =	\$11.00/hour regular rate
\$11.00/hour x 0.5 overtime differential	\$5.50/hour
\$5.50/hour x 10 overtime hours =	\$55.00 overtime due
Total compensation: \$550.00 + \$55.00 =	\$605.00 for the week

All hours worked must be recorded and totaled to determine whether overtime is due. This means that all compensable pre-shift, post-shift, and training time must be included when totaling hours worked and determining whether overtime is due. Paying overtime according to scheduled hours only may not reflect hours actually worked.

Other questions frequently asked about overtime include:

1) How many hours per day or per week can an employee work?

The FLSA does not limit the number of hours per day or per week that employees age 16 years and older can be required to work.

2) How many hours is full-time employment? How many hours is part-time employment?

The FLSA does not define full-time employment or part-time employment. This is a matter generally to be determined by the employer. Whether an employee is considered full-time or part-time does not change the application of the FLSA, or eligibility for overtime.

3) When is double time due?

The FLSA has no requirement for double time pay. That is a matter of agreement between an employer and employee.

4) Is extra pay required for night or weekend work?

The FLSA does not require extra pay for night or weekend work. Extra pay for working nights or weekends is a matter of agreement between the employer and the employee.

For additional information on the requirements of the FLSA, visit the U. S. Department of Labor Wage and Hour Division's website at www.dol.gov/whd , or call 866-4US-WAGE (866-487-9243). Your state may have additional requirements or different statutes or regulations. To find your state labor department's contact information, visit http://www.dol.gov/whd/contacts/state_of.htm .