

Frontline

Human Resources
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Practical Information for Managers & Supervisors

Wage and Hour Focus: Overtime Pay

As 2013 gets started, it's a good idea for business owners and supervisors to refresh themselves on wage and hour laws regarding overtime. Often times, overtime can become tricky and complicated due to misunderstandings of the laws. The best way to protect a company from overtime wage and hour compliance issues and investigations is to ensure that owners and supervisors are fully knowledgeable on the subject.



The federal overtime provisions are contained in the Fair Labor Standards Act (FLSA). Unless exempt, employees covered by the Act must receive overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay. (To learn more about exempt versus non-exempt employees, see the Legal Briefing on page 11.) There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, unless actual overtime hours are worked on such days.

The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

The regular rate of pay cannot be less than the minimum wage. The regular rate includes all remuneration for employment except certain payments excluded by the Act

itself. Payments which are not part of the regular rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the statutory exclusions noted above) in any workweek by the total number of hours actually worked.

Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs.

OVERTIME AND WORK HOURS

Q & A about the Fair Labor Standards Act (FLSA)

When is overtime due?

For covered, nonexempt employees, the FLSA requires overtime pay at a rate of not less than one and one-half times an employee's regular rate of pay after 40 hours of work in a workweek. Some exceptions to the 40 hours per week standard apply under special circumstances to police officers and fire fighters employed by public agencies and to employees of hospitals and nursing homes.

Some states have also enacted overtime laws. Where an employee is subject to both the state and Federal overtime laws, the employee is entitled to overtime according to the higher standard (i.e., the standard that will provide the higher rate of pay).

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 aged 16 years and older can be required to work.

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.

When can an employee's scheduled hours of work be changed?

The FLSA has no provisions regarding the scheduling of employees, with the exception of certain child labor provisions. Therefore, an employer may change an employee's work hours without giving prior notice or obtaining the employee's consent (unless otherwise subject to a prior agreement between the employer and employee or the employee's representative).

When is double time due?

The FLSA has no requirement for double time pay. This is a matter of agreement between an employer and employee (or the employee's representative).

Is extra pay required for weekend or night work?

Extra pay for working weekends or nights is a matter of agreement between the employer and the employee (or the employee's representative). The FLSA does not require extra pay for weekend or night work. However, the FLSA does require that covered, nonexempt workers be paid not less than time and one-half the employee's regular rate for time worked over 40 hours in a workweek.



	This Pay	Year
Gross Pay	388.27	
Pension	0.00	
AVC's	0.00	
Taxable Pay	388.27	
Tax	0.00	
NI	0.00	
ESP	0.00	
TP	0.00	
		388.27

POINTS TO CONSIDER

Definition of "overtime." As stated, the usual definition is all hours worked in excess of eight hours a day or 40 hours a week. The term "hours worked" in itself may pose problems. Most employers think that if any employee voluntarily comes to work early or stays late, the employer is not required to pay for that time. In fact,

"hours worked" means any time spent by the employee in any activity that benefits the employer. Further, "hours worked" refers to those hours actually worked and not to any paid days off. For example, if an employee works 35 hours in a week and is paid an additional 16 hours for two holidays, the total hours worked is 35, not 51, for overtime calculations. On the other hand, if the employee works 42 hours in a week and is paid for 16 hours for holiday time, the employee is entitled to two hours of overtime pay.

Reporting overtime. Companies should require that all hours worked, including all hours of overtime, be reported to the employer and that no overtime be worked unless the employer has requested it and has knowledge of it. Even though an employer may not actually know about overtime, if it knew or should

have known about it, it may be liable for the overtime. If the employer has a policy against working overtime without reporting it and has no actual or constructive knowledge of the overtime being worked, it may be able to avoid such liability.

On call. Employees who are subject to being called into work may also qualify for overtime. For example, an employee who is required to remain on call so that he or she cannot use the time effectively for his or her own purposes is working, and all of those hours count as "hours worked." In contrast, an employee who is merely required to leave word where he or she may be reached while off

duty is probably not engaged in work, and thus this time is not counted as "hours worked" for the purposes of calculating overtime. Companies should carefully spell out any on-call requirements. You may also be able to limit on-call duties to those positions that are clearly exempt from overtime.