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HR411® Tip of the Week

Special Overtime Situations: How to Properly Calculate Overtime Pay

Under the federal Fair Labor Standards Act (FLSA), employers generally must pay non-exempt employees overtime pay at a rate of one and a half times the employees' regular rate of pay for all hours worked in excess of 40 in a workweek. In addition, state law may require overtime under other circumstances, such as if an employee works over eight hours in a workday, works on the seventh consecutive day of the workweek, or works on holidays:

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Certain employment arrangements may complicate what otherwise seems like a straightforward overtime calculation. This Tip addresses a number of special overtime situations, and provides guidelines for properly calculating overtime pay.

Employee's overtime was not authorized in advance:

When an employee fails to obtain prior authorization to work overtime, regardless of whether an employer has a policy requiring such authorization, the employer is still required to pay the employee overtime. The employer, however, may subject the employee to disciplinary measures (that are applied consistently to all employees) for working unauthorized overtime and violating company policy, but in no case may the employer withhold overtime pay.

Tipped employees:

The FLSA provides specific guidelines for employers who need to calculate overtime pay for tipped employees. Under federal law, tipped employees are those who customarily and regularly receive more than $30 each month in tips.

While an employer may consider tips part of an employee's wages, under federal law, an employer must pay a tipped employee at least $2.13 per hour in direct cash wages. The employer, however, may take a tip credit toward its minimum wage obligation to the tipped employee equal to the difference between the required direct cash wage (at least $2.13) and the federal minimum wage (currently $7.25). The maximum tip credit that an employer currently can claim under the FLSA is $5.12 per hour ($7.25 - $2.13). The following is a sample calculation for paying overtime to a tipped employee who receives $2.13 in direct cash wages.

Example: A tipped employee works 50 hours in a workweek. The employee's regular rate of pay is $7.25 per hour, the applicable minimum wage.

Step 1: Use the employee's regular rate of pay to calculate the overtime rate.

$7.25 x 1.5 =$10.88

Step 2: Subtract the appropriate tip credit from the overtime rate to achieve the adjusted rate and multiply by the number of overtime hours worked that week.

$10.88 - $5.12 = $5.76

$5.76 x 10 overtime hours = $57.60 overtime pay

Step 3: Add the employee's straight pay plus the overtime pay to calculate total pay that week.

40 hours x $2.13 = $85.20 straight time

$85.20 straight time + $57.60 overtime = $142.80

Note: Some states have stricter limits on tip credits or prohibit them altogether. Employers should check their state law for compliance requirements. For more information on pay requirements pertaining to tipped employees under federal law, visit the U.S. Department of Labor (DOL) website here.

Non-exempt salaried employees:

Employers sometimes use the terms for salaried and exempt employees interchangeably, which can create confusion as to the employee's status and eligibility for overtime pay. While some employers may choose to pay non-exempt employees on a salary basis, these employees are not necessarily exempt from overtime. To be considered exempt, the employee must meet very specific criteria. These exemptions are narrowly defined and are based on an established set of criteria relating to the employee's salary and duties. Non-exempt salaried employees are otherwise entitled to overtime when they work more than 40 hours in a workweek.

Example: An employer may hire a worker for a 45 hour workweek with a weekly salary of $405. In this instance, the employee's regular rate of pay is calculated by dividing the $405 straight-time salary by 45 hours, resulting in a regular rate of $9.00 per hour. To calculate overtime pay, multiply the five hours worked over 40 by one-half the regular rate of pay (5 x $4.50 = $22.50). For more information on calculating overtime for salaried non-exempt employees, visit the DOL website, here.

Piece rate employees:

Employees paid on a piece rate or piecework basis are generally those that are compensated per task performed or number of units produced. The regular rate of pay for an employee paid on a piecework basis is obtained by dividing their total weekly earnings by the total number of hours worked in that week. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the full piecework earnings.

Example: An employer pays an employee $480 on a piecework basis for 48 hours worked in a week. The regular rate of pay for that week is $480 divided by 48, or $10.00 per hour. Since straight-time earnings have already been included in the $480, the employee is entitled to an additional 8 hours of overtime pay calculated at one-half the employee's regular rate of pay. Half of this employee's regular rate of pay is $5.00, which results in an additional $40.00 ($5.00 x 8 overtime hours) and total pay of $520 for the week.

Note: Certain conditions must be met in order to pay an employee on a piecework basis. Additionally, there are alternative methods for calculating piece rate pay depending on the work situation. Employers are urged to seek guidance from legal counsel when making these calculations.

Paid two or more rates by the same employer:

When an employee, in a single workweek, works two different jobs at different rates of pay for the same employer, the regular rate for that workweek is the weighted average of the two.

Example: A non-exempt employee is employed by the same employer in two jobs. In one workweek, the employee works 10 hours in the job that pays an hourly wage of $10 and 40 hours in the job that pays an hourly wage of $20. To calculate overtime, the employer would take the following steps:

Step 1: Calculate total straight-time pay.

($10 hourly rate x 10 hours) + ($20 hourly rate X 40 hours) = $900

Step 2: Calculate regular rate of pay.

$900 straight-time pay divided by 50 hours worked = $18.00

Step 3: Calculate overtime premium pay.

$18.00 regular rate of pay x .5 x 10 overtime hours = $90.00

Note: Since the straight-time earnings have already been calculated for all hours worked (see Step 1), the additional amount to be calculated is one-half the regular rate of pay.

Step 4: Calculate total compensation for week.

$900 straight-time pay + $90 overtime pay = $990

When an employee works for two joint employers:

Where two or more employers make an arrangement to jointly employ an employee, the total hours worked by the employee for both employers must be added together to determine the total number of hours worked in the workweek. Therefore, if the employee works more than 40 hours combined, he or she is entitled to overtime pay at a rate of one and a half times their regular rate of pay. The DOL provides further guidance in this area here.

Calculating overtime when an employee receives a non-discretionary bonus:

Employers who pay out non-discretionary bonuses (pre-determined bonuses based on fulfilling certain criteria in an agreement) must be sure to include the bonus amount when determining a non-exempt employee's regular rate of pay. If a bonus covers only one weekly pay period, the amount of the bonus should be added to the other straight-time earnings and then divided by the total hours worked by the employee. Where the calculation of a bonus is deferred over a period of time longer than one workweek (for example an annual bonus) it must be apportioned back over the workweeks of the period during which it may be said to have been earned.

The employee will then receive additional compensation for each workweek in which he or she worked overtime during that period. The following is an example of how to calculate overtime where an employee receives a non-discretionary bonus:

Example: A non-exempt employee is paid $10 per hour. In the applicable workweek, the employee works 50 hours and also receives a $100 non-discretionary productivity bonus.

Step 1: Calculate total straight-time.

($10 hourly rate x 50 hours worked) + $100 bonus = $600

Step 2: Calculate regular rate of pay.

$600 straight-time pay divided by 50 hours worked = $12

Step 3: Calculate overtime premium pay.

$12 regular rate of pay x .5 x 10 overtime hours = $60

Note: Since the straight-time earnings have already been calculated for all hours worked (see Step 1), the employee is entitled to an additional 10 hours of overtime pay, calculated at one-half the regular rate of pay.

Step 4: Calculate total compensation for week.

$60 overtime pay + $600 straight-time pay = $660

For more information on calculating overtime when an employee receives a non-discretionary bonus, visit the DOL website, here.

Wading through federal, state and local laws that dictate overtime pay can be tricky. Employers should carefully review FLSA requirements, and any applicable state and local law before making overtime determinations. If special circumstances arise requiring additional consultation, employers may consider seeking legal guidance on overtime pay to address situations unique to their business.

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