

Overtime Calculations

January 26, 2011

The Fair Labor Standards Act (FLSA) requires covered employers to pay time and one-half for all hours worked in excess of 40 hours per workweek to all non-exempt employees. Workweek is defined as any fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods.

What is work time for overtime calculations? Rest periods of 5 to 20 minutes are counted as work-time, but meal periods of 30 minutes or more are not counted. Travel to work-related events is counted as work-time. *Not included as work-time* is absences paid through a sick leave, vacation, or jury duty policy. Only actual time worked is considered in the calculation of hours worked and overtime. In this digital age, if a nonexempt employee works from home, answers emails from a smart phone or does other work off the employer's premises, this is work time for overtime calculations. Overtime is not required to be paid to employees who are asked to stay by the telephone at home or be available by pager. Overtime is not required for insignificant amounts of time before or after work (such as time to wash hands before going home).

Can an employee waive his right to overtime? In no case may an agreement between an employee and employer waive the employer's responsibility to pay overtime. Similarly, an announcement by management that no overtime will be permitted or no overtime will be paid unless approved in advance is not permissible. Employers are obligated to pay for all overtime worked, whether approved or not; employers must utilize their disciplinary system to address those working beyond approved time.

How do you determine the amount of overtime pay? Overtime is based upon an employee's regular rate of pay which includes base pay, shift premium, non-discretionary bonuses, and commissions. The regular rate of pay can never be below the minimum rate. It is an hourly rate, figured by dividing the total remuneration for employment in a workweek by the total hours actually worked in such workweek. Bonuses, paid idle time, and premiums paid under custom or contract work also enter into overtime pay calculations.

EXAMPLE: Sally works 40 hours a week and is paid \$320 per week. Her hourly rate is \$8 an hour. She works 42 hours one week and is paid \$344 for the week $[(40 \times \$8) + (2 \times \$12) = \$344]$.

EXAMPLE: Fred is a dispatcher for a trucking company and is paid \$500 a week, regardless of the number of hours he works. One week, he works 42 hours, and the next week he works 46. His regular rate of hourly pay for 42 hours a week is \$11.90 ($\$500/42$), so that his pay is \$511.70 [$(40 \times \$11.90) + (2 \times \$17.85)$]. For the 46-hour week, his regular rate of pay is \$10.87 per hour ($\$500/46$) so that his pay is \$532.66 [$(40 \times \$10.87) + (6 \times \$16.31)$]. If in this example, the regular rate of pay drops below minimum wage, Fred must be paid minimum wage for all hours worked and the overtime rate for hours worked over forty is time and one-half the minimum wage.

EXAMPLE: Caroline is a receptionist who works a 40 hour workweek and is paid \$11.50 per hour. During the first week of June, she took 3 days off for a cruise to the Bahamas and three days of vacation pay at 8 hours a day. The other two days she worked a total of 20 hours. She is paid for a total of 44 hours. Caroline is not paid overtime for that week since she only actually worked 20 hours.

Some states have overtime laws. If the state law is more beneficial to the employee, then the state law prevails over the federal law.

Navigating the rules of FLSA is not an easy task and requires a special expertise. WorkLife HR is dedicated to providing a staff experienced and knowledgeable in attaining compliance with the FLSA regulations. Any time you have a question regarding your payroll, contact your payroll processor or your HR Consultant for assistance by calling (888) 880-1027.

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