New Overtime Rules Effective Dec. 1: How to Calculate Overtime Pay

The Fair Labor Standards Act (FLSA) requires employers to pay "non-exempt" employees at least the minimum wage for each hour worked as well as overtime pay for all hours worked in excess of 40 in a workweek. There are exemptions from these requirements for employees that meet certain salary and job duties tests.

Effective **December 1, 2016**, the Department of Labor (DOL)'s final rules will raise the minimum salary requirements for the administrative, professional, and executive exemptions to $913 per week. To comply with the new rules, employers with exempt employees will need to:

1. Pay exempt employees a weekly salary of at least $913; or
2. Reclassify exempt employees as non-exempt and pay them overtime whenever they work more than 40 hours in a workweek.

With the impending rule change, it's a good time to ensure you're calculating overtime correctly. Below is an overview of overtime requirements and some various pay scenarios to help you review your practices.

Overtime Background:

Under the FLSA, overtime is generally calculated at 1.5 times the non-exempt employee's "regular rate of pay." An employee's "regular rate of pay" includes their hourly rate plus the value of nondiscretionary bonuses, shift differentials, and certain other forms of compensation.

Note: Depending on the circumstances, some states have different overtime rates. For instance, California requires 1.5 times an employee's regular rate of pay for all hours worked over eight in a workday and two times an employee's regular rate for all hours worked over 12 in a workday.

Overtime Examples:

Example #1: Hourly Wage Only

A non-exempt employee is paid $20 per hour and receives no other forms of compensation. In one workweek, she works 50 hours. Under the FLSA, her overtime pay is calculated as follows:

$20 (regular rate) x 1.5 (OT premium) x 10 hours (OT hours worked) = $300 in OT pay

Example #2: Hourly Wage with a Nondiscretionary Bonus

A non-exempt employee is paid $10 per hour. In one workweek, he works 50 hours and also receives a $100 non-discretionary productivity bonus. Overtime is calculated as follows.

Step 1: Calculate total straight-time pay

($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

Since the straight-time earnings have already been calculated (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 the week

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

Note: If the nondiscretionary bonus is earned over a single workweek, as is the case above, the bonus is added to the employee's regular earnings for that workweek when determining the regular rate of pay. However, if the bonus is earned over a series of workweeks, the bonus must be included in the regular rate of pay in all overtime weeks covered by the bonus period. In such a case, the employer may temporarily disregard the bonus in computing the regular hourly rate until the amount of the bonus can be determined. Once the amount is determined, it must be apportioned back over the workweeks of the period during which the bonus was earned. For example, if an employee receives a $2,600 bonus for meeting certain annual goals, you would divide $2,600 by 52 weeks, which results in the weekly equivalent of $50. Then add $50 to the employee's regular earnings in each workweek the employee worked overtime to figure out the employee's regular rate of pay for that week and make catchup payments accordingly.

Example #3: Multiple Rates of Pay

A non-exempt employee works for the same employer in two different jobs. In one workweek, the employee works 10 hours for $10 per hour and 40 hours for $20 per hour. When there are two or more rates of pay, the regular rate for that workweek is the weighted average. To calculate overtime:

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

Since the straight-time earnings have already been calculated (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

Example #4: Salaried Non-Exempt Employee with Fixed Schedule

A non-exempt employee with a fixed schedule earns a weekly salary of $400 and is expected to work 40 hours for that salary. In one particular workweek, the employee works 50 hours.

Step 1: Calculate total straight-time pay

$400 salary divided by 40 hours = $10 hourly rate

50 hours worked x $10 hourly rate = $500.00

Step 2: Calculate regular rate of pay

$500.00 straight-time pay divided by 50 hours worked = $10.00 per hour

Step 3: Calculate overtime pay

$10 regular rate of pay x .5 x 10 overtime hours = $50

Since straight-time earnings have already been calculated (see Step 1), the additional amount to be calculated is one-half the regular rate of pay ($10 x .5=$5).

Step 4: Calculate total compensation for week

$500.00 straight-time pay + $50 overtime pay = $550

Note: Under the FLSA, to calculate a salaried non-exempt employee's regular rate of pay, for overtime purposes, consider the number of hours the employer and employee understand that the salary is intended to cover. For example, if the employer and employee understand the salary to cover 45 hours, then the employer may calculate the regular rate of pay by dividing the weekly salary by 45 hours. In this case, the overtime rate would be .5 x the regular rate for hours 40 to 45 and 1.5 times the regular rate for hours in excess of 45 under the FLSA. Some states have different rules. For example, California limits the salary to cover a maximum of 40 hours. Check your state law to ensure compliance.

Conclusion:

With new overtime rules going into effect December 1, 2016, employers' overtime practices may face increased scrutiny. Be sure to calculate and pay overtime in accordance with state and federal laws.

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