Common Mishaps in Overtime Compliance

Three Questions to Assess your Business Risk

advanced time

An Introduction to Overtime Pay

Managing wage and hour regulations is complicated. One of the most challenging components businesses face is the calculation and payment of overtime.

Overtime regulations are straightforward on the surface.
Most companies must pay nonexempt employees overtime for all hours worked over 40 hours in a workweek. The workweek does not have to be a calendar week, but according to the Department of Labor it must be a "fixed, regularly recurring period of 168 hours, or seven consecutive 24-hour periods."

While that may appear to be straightforward, companies frequently misapply the rules.

So how do you know if you're in compliance?

We've outlined three key questions to help you understand overtime rules.

1 | Who Qualifies for Overtime Pay?

For every dollar a company spends on Workforce Management it gets $10.00 back.
Nucleus Research, October 2014

While other aspects of overtime laws receive more attention, the topic of which employees require overtime pay is one of the most important issues a company must address. In fact, the Department of Labor has highlighted this as an area of emphasis for enforcement.

Companies can categorize employees in one of two ways under the Fair Labor Standards Act (FLSA): exempt and nonexempt. As implied, those who are exempt do not fall under the overtime requirements. Nonexempt employees do fall under the overtime requirements. Sometimes this difference is wrongly labeled as salaried employees and hourly employees. The problem with such designations is that they assume all salaried employees are exempt from overtime.

To label an employee as exempt, they must pass three tests. If they fail any of these tests, they must be classified as nonexempt, regardless of whether they are hourly or salaried employees.

Salary Basis Test

To pass this test, the employee must be paid a predetermined, fixed minimum salary regardless of hours worked. This is the traditional understanding of Salaried employees.

Salary Level Test

This test places a minimum salary for exempt employees. As of July 1, 2024, the minimum annual salary must be $43,888 or $844 per week.

Duties Test

Many companies wrongly assume that if their employees earn a fixed salary of at least $844 a week, they can automatically designate them as exempt. It's possible for employees to pass these first two requirements and still not qualify under the Duties requirement. The Duties requirement is commonly misunderstood, and is an area of emphasis for the Department of Labor. Let's dig deeper.

Duties Test Explained

There are several types of duties that an employee can perform to qualify under the duties test.

Executive Exemption:

Qualifying employees manage the enterprise or department, direct the work of at least two employees, and have the authority to hire and fire employees or significantly influence hiring and firing.

Administrative Exemption:

Employees performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers. These are high level employees empowered to make critical decisions using personal judgment and expertise.

Professional Exemption:

Employees whose primary duty requires advanced or specific knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. The work for this professional is predominantly intellectual in nature and includes a consistent exercise of discretion and judgment. Typically this exemption would apply to Doctors, Lawyers, Teachers, Accountants, Architects, etc.

Highly Compensated Employees:

Individuals are exempt if they receive a salary of at least $132,964 a year. Their primary work is office work or some other non manual work, and they regularly perform at least one of the duties described in the Executive, Administrative or Professional Exemption.

Their work regularly includes the exercise of discretion and independent judgment with respect to matters of significance. An Executive Assistant to a high-ranking company official would also qualify.

Additional Exemptions:

Outside Sales Exemption (inside sales is not covered)

Computer Employee Exemption

Creative Professional Exemption

Always consult a labor attorney to make sure these exemptions are being used correctly.

Important Note

It is the actual job duties of the employee that matter, not job titles. Employers should look at the job descriptions of each employee classified as Salary Exempt to be sure they meet these requirements. Any employees that do not meet the duties test are nonexempt employees and should receive overtime pay.

2 | When Do We Pay Overtime?

For most companies, nonexempt employees MUST be paid overtime for all hours worked over 40 in a pay period. This is true whether or not those hours were "authorized" or "approved". A policy that "all overtime must be approved in advance" does not permit employers to avoid paying employees overtime for those hours. If the employee worked the hours, the hours must be paid.

Additionally, it is important to remember that, for most organizations overtime is based on the workweek, not the pay period. If an organization has a pay period longer than one week, the timecard should display the details for each workweek within that pay period.
There is no federal requirement for daily overtime or extra pay for nights or weekends. Some states may require overtime payment outside of the weekly total, but no such requirement exists on the federal level.

In the calculation of hours, it also required that ALL compensable hours be tracked. This includes:

1

On-Duty Time
The time an employee is on-duty is considered compensable, because the employer is controlling the employee's time, even if waiting is part of the job or employees are allowed to use the time for their own purposes.

2

On-Call Time
On-call time is compensable if an employee is required to remain on-site or close to the employer's location while on call. For employees merely required to inform their employer where they can be reached while they are out of the office, on-call time would not be compensable.

3

Sleeping Time
Compensable time may include the time an employee can sleep when not busy if the employee is required to be on-duty. However, employers and employees can reach an agreement to exclude sleep time from compensable time if certain conditions are met.

4

Required Attendance for Meetings, Training Programs and Similar Activities
Compensable time includes any time employees are required to attend meetings, lectures, training programs or similar activities. Employers are not required to count the hours if attendance is voluntary, outside of working hours, not directly related to the employee's job and no productive work is done while attending.

5

Travel Time
Daily commutes are not considered compensable time. However, if an employee must travel from one job site to another during the workday, this must be counted. In addition, if the employee has a special one-day assignment in another city, this travel time must be included in the employee's accrued number of hours worked.

6

Short Breaks
Employers may need to examine the frequency of employees' rest periods. Short breaks (defined as approximately 20 minutes or less) include bathroom breaks, coffee breaks, and time for snacks and must be counted as hours worked.

7

Meal Breaks
In general, meal periods of 30 minutes or more are not compensable time IF employees are completely relieved from their work responsibilities for the purpose of eating a meal. If an employee is expected to be available to perform any job-related duties during their "meal" time, the time is considered compensable. Permission to leave the employer's premises during the meal break is not required for an employee to be relieved of all duties.

8

Preparatory and Concluding Activities
Activities before and after shifts, such as inspecting machinery and putting on personal protective equipment, are considered compensable time if they are integral to the employee's principal activity.

3 | How Do We Calculate Overtime Pay?

Overtime hours are paid at the rate of 1.5 times the employee's regular rate. The FLSA defines the regular rate of pay as the weighted average of an employee's hourly rate, which is calculated by dividing the total pay in any workweek by the total number of hours worked.

When an employee is paid a single hourly rate during the pay period, that rate is the regular rate for overtime calculations. Therefore, an employee that is paid $15 per hour would be paid $22.50 ($15 x 1.5) for all overtime hours worked.

If additional payments, such as production bonuses or commission payments are made, they must be added to the employee earnings. In this case, the regular rate would be determined by dividing the sum of the straight-time compensation and the amount of the bonus payment for that pay period, by the number of hours worked.

When an employee is paid multiple rates during the week the regular rate is the weighted average of the rates. In this case, the overtime payment is most often calculated** in the following way:

1. **Determine the employee's straight time compensation by multiplying the hours worked by the appropriate hourly rate. Then add those totals together.**
2. **Calculate the weighted average or "regular rate" by dividing the total straight time compensation number of hours worked.**
3. **Determine the Overtime rate by multiplying the regular rate by .5.**
4. **Calculate the overtime pay by multiplying the overtime hours by the overtime rate**
5. **Calculate the total compensation for the pay period by adding the regular compensation from step 1 to the Overtime compensation from step 4.**

Consider this example:

Bill works in a manufacturing company. When he works as a Quality Inspector his hourly rate is $14 and when he works as the Production Lead he's paid $17 an hour. Over the course of the pay period he worked 30 hours in Quality Inspector and 20 hours in Production Lead.

Straight time Pay: (30 hrs x $14) + (20 hrs x $17) = $760.00

Regular rate $760 / 50 hours = $15.20 per hour

Overtime rate $15.20 x .5 = $7.60

Overtime pay $7.60 x 10 overtime hours = $76.00

Total Compensation $760 + $76 = $836.00

Under certain circumstances, employers may instead use the rate of pay in effect when the overtime hours are worked. This method may not be chosen unilaterally, since it requires a prior agreement with the employee.

For employees paid by the hour, piece, day, or job, the compensation must be converted to an hourly regular rate. This is done by taking the total compensation for the week and dividing it by the number of hours worked. Overtime pay would be calculated using that rate.

Finally, a note regarding salaried employees is necessary. Remember, simply paying a fixed salary does not exempt an employee from overtime requirements. For those employees who are paid a fixed salary, but do not meet the other two exemption tests discussed earlier, overtime will need to be paid. This is determined by dividing the weekly salary by the number of hours the salary is intended to compensate. If the salary is intended to cover 50 hours, the employee will need to be paid overtime for 10 hours at the rate of 0.5.

Conclusion

Overtime can be costly to pay, but it can be ultimately more costly to not pay at all or pay incorrectly. Start with these three questions to make sure you're meeting the basic requirements!

Want to learn more?

Contact our experts to find the right solutions to tackle your tough people management problems.

1-800-841-3824

advancedtime.com