THOUSANDS OF COMPANIES PAY PENALTIES FOR FAILING TO COMPLY WITH FLSA RULES

Enacted in 1938, the Fair Labor Standards Act (FLSA) includes minimum wage, overtime pay, and child labor protections for workers in the United States. Willful violators may be prosecuted criminally and fined up to $10,000.¹

In 2007, the Department of Labor concluded a record-breaking 30,467 FLSA compliance actions and assessed over $10.3 million in civil penalties.

TO HELP AVOID PENALTIES, CORRECTLY FOLLOW THESE THREE OVERTIME REQUIREMENTS

The FLSA requires that covered, nonexempt employees receive overtime pay at one and one-half times the employee’s regular rate of pay for all hours worked over 40 in a workweek.

This guide will clarify these three key terms, explaining how you determine an employee’s regular rate of pay, what activity counts as hours worked, and how the FLSA defines a workweek. Follow these definitions as you calculate overtime pay and you are more likely to fare well during a Department of Labor audit.

This guide is intended as an overview. There are exceptions and special circumstances (e.g., special rules for employees of hospitals and residential care establishments, full-time students, and tipped employees). For guidance on how to handle specific situations, go to www.dol.gov/elaws/otcalculator.htm.

ADDITIONAL RESOURCES

DOL overtime calculator
To help employers calculate overtime correctly under the FLSA, the Department of Labor (DOL) has created an Overtime Calculator Advisor on its Web site. Visit www.dol.gov/elaws/otcalculator.htm.

ADP’s time and labor management solutions
ADP’s time, attendance, and labor management solutions help you increase the speed and accuracy of payroll preparation, improve wage and hour compliance, and optimize your labor investment. Collection methods include:

• Time clocks
• Electronic time sheet/online time sheet
• Biometric time clock (hand geometry and fingerprint)
• Telephone/voice response
• Wireless devices

For more information, visit www.ADP.com and select “Services for Employers.”

Provided as a service to employers by ADP.

ADP’s free Guide to FLSA Rules Regarding Exempt/Nonexempt Employees explains which employees are exempt from FLSA minimum wage requirements. To download it, visit www.ADP.com and search for “FLSA Guide.”

¹ www.dol.gov/compliance/guide/minwage.htm#Penalties

NOTE: This guide is provided for informational purposes and covers Federal laws only. It is not intended to offer specific legal advice from counsel and does not cover state laws, which may vary. If you require legal or other expert assistance, seek the services of a competent professional.
WHAT COUNTS AS HOURS WORKED

In general, hours worked include all time an employee must be on duty, on your company’s premises, or at any other prescribed place of work. This also includes time the employee is “suffered or permitted” to work. So if an employee voluntarily stays late to finish an assigned task, prepare reports, or finish helping a customer, that time counts as hours worked under the FLSA.

A separate ADP guide provides more detail on what does and doesn’t count as “hours worked,” including on-call time, attendance at mandatory training, and business travel. To download your free copy, go to www.ADP.com and search for “To Pay or Not to Pay.”

WHAT COUNTS AS A WORKWEEK

For FLSA purposes, a workweek is defined as a fixed and regularly recurring period of 168 hours, or seven consecutive 24-hour periods. The workweek may begin on any day of the week and at any hour of the day. It need not coincide with the calendar week. An employee’s frequency of pay (e.g., bi-weekly, semi-monthly, monthly) has no impact on this fixed workweek.

Once the start and stop times of an employee’s workweek are established, they remain fixed regardless of the hours the employee is scheduled to work. These times may be changed, however, as long as that change is intended to be permanent and not designed to evade overtime requirements.

For purposes of overtime payment, each workweek stands alone; you cannot average two or more workweeks.

CALCULATING THE REGULAR RATE OF PAY

An employee’s regular rate is the weighted average of his/her hourly rate. This is calculated by dividing the total pay for employment in any workweek by the total number of hours actually worked.

Total pay includes all payments you make to, or on behalf of, your employee. It is not necessary that you pay employees by the hour. The employee’s compensation can be determined using a piece-rate, salary, or commission. Also included are shift differential, nondiscretionary bonuses (bonuses promised to employees before the work begins), promotional bonuses, and cost-of-living adjustments.

Include goods and facilities furnished by your company

Total pay also includes any payments made in the form of goods or facilities customarily furnished by your company. For example, if your employee’s wages include lodging provided by your company, the reasonable cost or the fair value of that lodging must be added to your employee’s earnings before determining his/her regular rate.

On the other hand, deductions for board, lodging, or other facilities do not affect the regular rate of pay computations; make the computation before the deductions are made.

Statutory exclusions

An employee’s regular rate does not include certain payments excluded by FLSA statutes:

- Sums paid as gifts for holidays, special occasions, or as a reward for service. To qualify, the dollar amount may not be measured by, or dependent upon, hours worked, production, or efficiency.
- Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause. In other words, if an employee takes a paid sick day or vacation day, that day’s salary need not be included when calculating his/her regular rate for that week.
- Reasonable payments for expenses an employee incurs while furthering your company’s interests. These include travel expenses, expenses such as laundering uniforms, or buying supplies or materials on your company’s behalf.
- Premium payments for overtime, or for working on weekends or holidays.
- Benefits such as life insurance or health insurance.

Multiple rates within one workweek

If employees perform different types of work and are paid at two or more rates during a single workweek, add up the earnings for all rates for the week and divide this total by the total number of hours worked for the week at all jobs.

Bonuses or commissions covering more than one workweek

When a nondiscretionary bonus covers more than a workweek, it must be allocated to the weeks in which it was actually earned. If that is not possible or practicable, another reasonable or equitable method must be adopted (for example, allocate an equal amount for each workweek covered by the bonus).

STEP-BY-STEP EXAMPLE OF CALCULATING TOTAL WEEKLY COMPENSATION

Step 1: Regular pay = total pay for workweek + additional compensation – exclusions

Step 2: Regular rate of pay = regular pay divided by total hours worked

Step 3: Premium pay for overtime = regular rate of pay x 0.5 x (total hours worked – 40)

Step 4: Total weekly compensation = total pay for workweek + premium pay for overtime

Example: An employee earns an hourly rate of $8.00 and works 46 hours in the workweek. The employee also receives a one-time $25 holiday bonus and a previously promised $10 bonus for perfect attendance.

Step 1: Regular pay = ($8.00 x 46 hrs.) + $10 = $378.00

Step 2: Regular rate of pay = $378/46 hrs. = $8.22/hr.

Step 3: Premium pay for overtime = $8.22 x 0.5 x (46 – 40 hrs) = $24.66

Step 4: Total weekly compensation = $368 + $25 + $10 + $24.66 = $427.66

In the above example, failing to include the $10 non-discretionary bonus when calculating the regular rate of pay would have resulted in paying $0.66 less to this employee. While this is a small amount, there is no de minimis when it comes to wages owed. The DOL does not look at individual employees, but rather at a company’s overall compliance. This employer would have been out of compliance because it failed to use the proper calculation method.