

Wage & Hour Insights

Guidance & Solutions for Employers



Can An Employer Pay An Exempt Employee Extra Compensation? [Wage & Hour FAQ]

By Staci Ketay Rotman on August 25, 2011



Q. My Company anticipates embarking on a big project this fall that will have extreme importance to the Company's future and require extra hours at the office. The Company wants to give a little extra pay to employees who work on this important project. A number of these employees are classified as exempt. May the Company provide extra compensation to exempt employees for their work on this project?

A. Yes. Exempt employees are not required to receive extra compensation for extra work, but the FLSA allows employers to provide extra pay and still maintain their employees' exempt status. Specifically, the FLSA regulations provide that an employer may provide an exempt employee with additional compensation so long as the employment arrangement also includes a guarantee of at least the minimum weekly-required amount or \$455 paid on a salary basis.

Generally, in these types of situations, the risk facing employers is whether the format of the additional compensation will invalidate the salary basis requirement, resulting in a loss of the overtime exemption. The regulations provide limited examples of acceptable additional compensation that will not affect the salary basis qualification. If your Company chooses to pay exempt employees additional compensation for this extra work, one of the payment formats with the least risk of destroying the employees' exempt status would be that of a flat sum bonus. An employee's exempt status – already difficult to establish - might be even more difficult to prove if the employee is paid time-and-a-half for the extra hours, like a non-exempt employee.

Copyright © Franczek Radelet P.C. All Rights Reserved. Disclaimer: Attorney Advertising. This is a publication of Franczek Radelet P.C. This publication is intended for general informational purposes only and should not be construed as legal advice.