Wage & Hour Insights
Guidance & Solutions for Employers

Calculating Overtime for Salaried Employees [Wage & Hour FAQ]

By Bill Pokorny on September 07, 2011

Q. We have a number of non-exempt employees who are nevertheless paid a salary. How do we calculate overtime for these employees?

A. The question above is a positive sign, because if you find yourself asking it you've passed the first hurdle of realizing that not all "salaried" employees are exempt from the overtime requirements of the Fair Labor Standards Act.

Generally speaking, calculating overtime is a simple affair. Employees must be compensated for hours worked in excess of forty hours in a single workweek at a rate of one and one-half times the employee's regular hourly rate of pay. The "regular rate" is calculated by dividing an employee's total non-overtime compensation for the week by the total number of hours worked. For employees who are paid a simple hourly rate, this calculation is simple, as the regular rate is simply the employee's normally hourly rate of pay.

However, things get trickier when a non-exempt employee is paid a salary. Suppose Chuck is paid a salary of $1000 per week. He works 50 hours in a certain week - 40 hours of straight time, and 10 hours of overtime. To calculate Chuck's overtime pay, you need one more crucial piece of information: how many hours is the $1000 salary intended to cover?

According to the courts, this issue is a matter of the agreement between Chuck and his employer. Suppose the company has an employee handbook that says that the normal workweek consists of 35 hours. If, based upon that statement, there is a general understanding that the base salary is intended to cover 35 hours of straight-time work, Chuck's pay would be (assuming I have my math right) as follows:

Regular rate = $1000 / 35 hours = $28.57/hr

Total pay = Regular salary + 5 hrs additional straight time + 10 hrs at time and-a-half

Total pay = $1000 + (5hrs x $28.57/hr) + (10 hrs x $28.57/hr x 1.5) = $1,571.40

On the other hand, suppose Chuck and the company have an understanding that the $1,000 salary is intended to cover up to 50 hours of work per week. In that case, no additional straight-time pay would be due if Chuck works 50 hours. Chuck would still be entitled to an overtime premium for the 10 hours of overtime worked. However, because his salary covers straight-time for those hours, the additional overtime premium due is only one half of the regular rate of pay:

Regular rate = $1000 / 50 hours = $20/hr

Total pay = Regular salary + 10 hours at 1/2 the regular rate

Total pay = $1000 + (10hrs x $20/hr / 2) = $1,100

Now, a smart employer looking at the above calculation might say to itself, "Ah, let's agree that the employee's salary will cover up to 100 hours of work." That would make the regular rate just $10 per hour, and save the company $50 in overtime expenses, right? If this looks too good to be true, it is. First, if Chuck is never actually scheduled to work 100 hours in a week, that agreement will likely be viewed as a sham by the Department of Labor. Second, the regulations say that if Chuck works less than agreed number of hours, then his regular rate is calculated by dividing his total non-overtime compensation by the total number of hours worked. In other words, regardless of how many hours the salary is meant to cover, if he only works 50 hours, his regular rate will still be $20 per hour.

Now, one last wrinkle: suppose it's understood by all concerned that Chuck's salary is intended to cover his straight-time compensation not for a specified number of hours, but for all hours that he happens to work in any given week, regardless of how many or how few. While paying a fixed salary for a fluctuating workweek is permissible and can in some cases reduce your overtime liability, there are also some strict limitations on this method, and some new uncertainty introduced by some regulations recently published by the Department of Labor. We'll talk about those in another post.