How to Calculate Overtime for Salaried Employees Who Also Receive Commissions [Wage & Hour FAQ]

By Staci Ketay Rotman on September 15, 2011

Reading about a recent lawsuit filed against Groupon, I was reminded that even the most cutting edge businesses may not understand the nuances associated with calculating overtime and find themselves a target for running afoul of wage and hour laws. My colleague and fellow blogger, Bill Pokorny, wrote a helpful blog entry last week on calculating overtime for salaried employees. I thought it might be useful for our readers if a follow-up entry was posted discussing how to calculate overtime for salaried, non-exempt employees who also receive commissions.

The key in calculating overtime is to determine the regular rate of pay. Generally speaking, adding commission payments to the mix does not alter this calculation; you still must divide the employee's total non-overtime compensation for the week by the total number of hours worked. As Bill points out in his post, things get trickier when a non-exempt employee is paid a salary. Adding a weekly commission payment does not really affect that calculation too much – the commission is simply added to the salary received for the week. Here is a sample calculation using Bill's prior example (and also assuming my math is correct):

1. Chuck is paid a salary of $1,000 per week. The employee handbook states that the normal workweek consists of 40 hours, thus the base salary is intended to cover 40 hours of straight-time work. In one week, Chuck works 50 hours – 40 hours of straight time, and 10 hours of overtime. The Company is also able to determine that Chuck earned $250 in commissions that week. Chuck's pay would be calculated as follows:

   Regular rate = $1,000 + 250/40 hours = $31.25
   Total pay = (Regular salary + commission) + 10 hrs at time and-a-half
   Total pay = $1,250 + (10 hrs x 31.25/hr x 1.5) = $1,718.75

2. Now assume that Chuck and the Company have an understanding that the $1,000 is intended to cover up to 50 hours of work per week. As a result, Chuck would be entitled to the additional overtime premium for 10 hours at one-half of the regular rate of pay:

   Regular rate = $1,000 +250/50 = $25/hr
   Total pay = (Regular salary + commission) + 10 hrs at half the regular rate
   Total pay = $1,250 + (10 hrs x $25/hr /2) = $1,375

But things get trickier when that employee is paid both a weekly salary and a monthly commission, and the employer is not able to determine exactly what workweek in the month the employee earned a commission. Here, Chuck earns $1,200 this month in commissions but the Company cannot tie the commissions earned to a specific workweek. In such a situation, the Company must allocate the commissions equally to each workweek in the period covered by the commission payment. Therefore, to calculate Chuck's regular rate of pay under these circumstances, divide the total commission amount ($1,200) by the number of weeks in the pay period (4) to determine the weekly commission earned ($300). So, here is how you would then calculate Chuck's overtime using the examples above:

1. **Regular rate** = $1,000 + 300/40 hours = $32.50
   Total pay = (Regular salary + commission) + 10 hrs at time and-a-half
   Total pay = $1,300 + (10 hrs x 32.50/hr x 1.5) = $1,787.50

2. **Regular rate** = $1,000 +300/50 = $26/hr
   Total pay = (Regular salary + commission) + 10 hrs at half the regular rate
   Total pay = $1,300 + (10 hrs x $26/hr /2) = $1,430

Hopefully, these examples will help guide employers through the perils of calculating overtime owed. As Bill points out, such overtime calculations may be different if the employer uses a fluctuating workweek method for paying employees. This will be addressed in a future post.