

NEW OVERTIME RULES AND PAY SCENARIOS

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Timeline of New Overtime Rules

- In 2014, President Obama signed a Presidential Memorandum directing the Department of labor to update the regulations defining which white collar workers are protected by the FLSA's minimum wage and overtime standards.
- July 2015 Proposed Rules Published
- Public invited to comment until September of 2015
- DOL Reviewed over 270,000 comments
- March of 2016 Proposal was submitted to the Office of Management and Budget
- May 18, 2016 Final Rules published
- December 1, 2016 Final Rules effective

Exempt vs. Non Exempt Status

Non-Exempt

- Paid for all hours worked
- Entitled to overtime at $1\frac{1}{2}$ x hourly rate
- Typically paid on hourly basis
- Any employee can be non-exempt

Exempt

- Paid a set salary each week
- Not entitled to overtime
- Must meet job duties test
 - This has not been changed

Summary of the Final Rules

Salary Increases for certain exemptions

- Administrative, Professional, and Executive exemptions increase from \$455 per week to \$913 per week
- \$23,660 to \$47,476

A Portion of Certain Bonuses Count

- Non-discretionary bonuses, incentive payments and, commissions can be used to satisfy 10% of the minimum salary requirement
- Must be paid on a quarterly basis

Salary Adjustments Every 3 Years

- Review of the 40th percentile of earning for full-time salaried workers in the lowest wage region
- January 1, 2020 will be the first adjustment
- Published notice will be given 150 days before the changes take effect

What you can do to prepare

- Raise exempt employees' salaries to meet the new requirement
- Reclassify exempt employees as non-exempt, making them overtime eligible

How to Reclassify Employees

- Get an accurate picture of the hours exempt employees typically work per week
- Conduct a time study
- Factor in peak periods for your organization and all the time that is considered “hours worked”, including traveling and training
- Calculate the costs of raising salaries versus reclassifying employees

Hours Worked

- Productive time
- Non-productive time
 - Rest breaks
 - Travel time
 - Training time

If you reclassify your employees as non-exempt, all of this time must be included when determining whether you have met the minimum wage requirements and whether overtime is due.

Overtime is 1.5 times the employees regular rate of pay and must be paid when an employee works more than 40 hours in a work week.

Calculating Pay Rate

Average 40 hours/week

Hourly rate= weekly salary/40 hours

Example: \$715 per week/40 = \$17.88
per hour

Average 40+ hours/week

Account for overtime premium

Example:

\$715 per week/40 hours +(10 overtime
x1.5)
= \$13.00 per hour

Questions that come up

- What is a non-discretionary bonus?
- Do we have to classify all employees the same?
- Can I pay impacted employees a salary after I reclassify them?
- Can I have a policy that prohibits employees from working overtime without prior approval?
- Can I just pay overtime to non-exempt employees at a flat sum instead of calculating it each week?
- Can I offer time off to employees instead of overtime?

Communicating Changes to Employees

- Act now
- Provide written notice as soon as possible
- Develop your message very carefully
 - Explain the changes and its effective date
 - The impact on the employee
 - The change is being made to comply with new government rule
 - Who can employees go with questions
 - Training and expectations on timekeeping

Other Considerations

- Train supervisors on the final rules
- Supervisors play an important role in preventing “off the clock” work
- Prepare for difficult conversations
 - Example: raise the salary of one employee to stay exempt but reclassify another employee and make non-exempt
 - Some employers might contemplate a policy prohibiting employees from discussing their pay with co-workers-this is not permitted
 - Section 7 of the National Labor Relations Act gives employees the right to act together, with or without a union to improve wages and working conditions. Prohibiting them from discussing pay could be construed as a violation of Section 7.

Pay Scenarios

Unauthorized Work

Scenario 1

Jeff's Bagel Store has a policy requiring employees to get authorization to work overtime. Sally repeatedly works unauthorized overtime. Can Jeff withhold overtime pay?

Solution

Even though Sally violated the policy, she's still entitled to overtime pay. **In no case can an employer withhold pay.**

Document, Document, Document

Scenario 2

Rachel noticed that several non-exempt administrative assistants are replying to her emails after they have punched out. Do these employees need to be paid for this time?

Solution

Yes, non-exempt employees must be paid for all hours worked. Make sure employees are aware that they are responsible for reporting after-hours work.

Working Interviews and Training

Scenario 1

Melissa wants to use “working interviews” to assess candidates’ skills before hiring them. Is she required to pay candidates for the time spent working?

Solution

Yes. Melissa should pay them at least the minimum wage per hour, withhold taxes, and comply with all applicable employment laws.

Scenario 2

Michael requires all staff to participate in child abuse prevention training. The training is scheduled to take place before the day care center open. Does Michael have to pay employees for this time?

Solution

Yes. Employees must be paid for time since it is a mandatory training.

According to the FLSA, training time must be paid unless it meets very specific criteria.

DOL Training Criteria

- Attendance is voluntary and outside of the employee's regular working hours
- It's not directly related to the employee's job
- The employee does not perform any productive work during the training

Meal and Rest Periods

Overview

- Rest breaks lasting 20 minutes or less must be paid
 - Nursing mothers are a whole different thing
- Bona fide meal periods can be unpaid as long as certain criteria are met
 - 30 minutes of completely relieved uninterrupted time

Scenario 1

Mark gives employees a 10 minute break 2 times per day. Two employees consistently extend those breaks to 20 minutes without permission. Does mark have to pay them for the extra time?

Solution

Yes. Generally, when employees take unauthorized extensions of rest breaks, the time **must be paid if the rest period lasts 20 minutes or less and employees weren't previously informed that such extensions are prohibited.**

Scenario 2

Sophia offers employees a 30 minute lunch period. One of her employees was on his lunch break when Sophia asked him to help a client. Does Sophia have to pay him for the full meal period?

Solution

Yes. Meal periods must be at least 30 minutes without interruption and the employee must be relieved of all duties. A meal period is subject to pay if it's interrupted for the company's benefit, or the employee is not free to use the time as they wish.

Travel Time

Scenario 1

Dave asks two employees to attend a seminar two hours away by car. The travel will take place during their normal work hours. Does he have to pay the employees for their travel time?

Solution

Yes. If an employee regularly works at a fixed location in one city but is given a special one-day assignment in another city, the time spent traveling must be paid.

Scenario 2

Mia asks Fred to take an overnight business trip. Fred's normal work hours are 8am-5pm Mon-Fri. His flight is scheduled for a Sunday. Does Mia have to pay Fred for the time spent on the flight?

Solution

Pay is required for the time that cuts across the employee's regular working hours, regardless of the day of the week. Travel to and from the hotel and airport must also be paid if it falls during the employee's normal work hours.

Key Takeaways and Q&A

- Ensure employees are properly classified
- Prepare now for DOL final rules
- Pay non-exempt employees for all hours worked
- Establish an accurate and reliable timekeeping process
- Maintain records of all hours worked
- Questions?