

Overtime Rule Refresher

Disclaimer!!!

- The author is not a Labor Attorney and information in this presentation should not be used as legal advice. Always consult your own legal counsel for specific questions. Thanks!

December 1, 2016-NEW RULE

- Raise the salary threshold indicating eligibility from \$455/week to \$913 (\$47,476 per year), ensuring protections to 4.2 million workers.
- Automatically update the salary threshold every three years, based on wage growth over time, increasing predictability.
- Strengthen overtime protections for salaried workers already entitled to overtime.
- Provide greater clarity for workers and employers.

Taco Bell Manager

- \$40,000/year
- Normally works 60 hours/week
- Considered not eligible for OT under current rules
- Possibly being abused by the current system
- Making less/hour than people they manage

If I pay an employee a yearly salary, I do not have to pay them overtime?

- Correct, I can work them as much as I want and only pay them their salaried amount.
- No, All employees deserve Overtime
- Maybe, It depends how they are classified (exempt or nonexempt) according to the Fair Labor Standards Act (FLSA).

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Overtime Basics

- Covered, nonexempt employees must receive one and one-half times the regular rate of pay for all hours worked over forty in a workweek.

What is a Workweek?

- Compliance is determined by workweek, and each workweek stands by itself.
- Workweek is 7 consecutive 24 hour periods (168 hours)
- Not pay period

Define your workweek in policy

- The workweek for all employees shall be from 12:00 AM Monday to 11:59 PM Sunday. The normal “workday” will vary from day to day, but will normally consist of an eight-hour day for a total workweek of approximately 40 hours.

What is a nonexempt employee?

- Nonexempt employees, as the term implies, are not exempt from FLSA requirements.
- Employees who fall within this category must be paid at least the federal minimum wage for each hour worked and given overtime pay of not less than one-and-a-half times their hourly rate for any hours worked beyond 40 each week. Not by pay period or not every two weeks. It goes by workweek.

Nonexempt

- Nonexempt employees must account for the time they work each week, regardless of pay (salary & hourly).
- Nonexempt = Overtime, regardless of how you pay them, salary or hourly.

Recordkeeping

- The FLSA requires that all employers subject to any provision of the Act make, keep, and preserve certain records.
- Time clocks are not required and records need not be kept in any particular form.
- Nonetheless, every covered employer must keep certain records for each non-exempt worker

How do we handle Holidays, Sick Leave and Vacation?

- Paid holidays, paid time off, or sick leave are not counted in computing overtime hours.

Computing OT

- ND Administrative Code 46-03

**ARTICLE 46-03
CALCULATION OF A REGULAR RATE AND OVERTIME**

Chapter 46-03-01 Calculation of a Regular Rate and Overtime

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CALCULATION OF A REGULAR RATE AND OVERTIME**

Section 46-03-01-01 Formulas for Determining Regular Rate and Overtime

46-03-01-01. Formulas for determining regular rate and overtime.

- Determining overtime from an hourly rate:

$$\text{Hourly rate} \times 1.5 = \text{Overtime hourly rate of pay}$$

$$\text{Overtime hourly rate of pay} \times \text{Number of hours worked in excess of 40} = \text{Amount of overtime due}$$
- Determining hourly rate and overtime from monthly salary:

$$\frac{\text{Monthly salary} \times 12}{52} = \text{Weekly salary}$$

$$\frac{\text{Weekly salary}}{\text{Total hours worked during that week}} = \text{Rate per hour}$$

To calculate overtime from this:

$$\text{Rate per hour} \times 1/2 \times \text{Number of hours worked in excess of 40} = \text{Amount of overtime due}$$
- Determining hourly rate and overtime for retail employees paid principally from commissions:

$$\frac{\text{Total compensation for one week}}{\text{Total hours worked for that same week}} = \text{Regular rate of pay}$$
- Weighted average method of overtime. When an employee performs two jobs for the same employer, with each job having a different rate of pay, the method of computing overtime is as follows:

Job 1:	$\frac{\text{Rate of pay}}{\text{Total hours}}$	\times	$\frac{\text{Number of hours}}{\text{Total hours}}$	$=$	$\frac{\text{Compensation}}{\text{Total compensation}}$
Job 2:	$\frac{\text{Rate of pay}}{\text{Total hours}}$	\times	$\frac{\text{Number of hours}}{\text{Total hours}}$	$=$	$\frac{\text{Compensation}}{\text{Total compensation}}$
Total compensation				$=$	
Total hours				$=$	Average per hour

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Political Subdivisions & OT

- State and local government employers—unlike private sector employers—can provide comp time rather than cash overtime payments in appropriate circumstances.

Comp Time

- Comp time must be provided at a rate of one-and-one-half hours for each overtime hour worked.
- For example, if an employee worked 44 hours in a single workweek (4 hours of overtime), they would be entitled to 6 hours (1.5 times 4 hours) of compensatory time off.
- When used, the comp time is paid at the regular rate of pay.

Do you have a Comp Time Policy?

- Or do you use OT?
- How much can you accrue?

What is an exempt employee?

- Exempt positions are excluded from minimum wage, overtime regulations, and other rights and protections afforded nonexempt workers. Employers must pay a certain salary rather than an hourly wage for a position for it to be exempt. Typically, only executive, supervisory, professional or outside sales positions are exempt positions.
- Exempt = No Overtime

Exemptions and Exceptions

- There are numerous exemptions and exceptions from the minimum wage and/or overtime standards of the FLSA

Three Tests for Exemption

1. Salary Level
2. Salary Basis
3. Job Duties

Minimum Salary Level: \$913

- The minimum salary level required for exemption is \$913 per week

Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed

“White Collar” Exemptions

The most common FLSA minimum wage and overtime exemption -- often called the “541” or “white collar” exemption -- applies to certain

- Executive Employees
- Administrative Employees
- Professional Employees
- Outside Sales Employees
- Computer Employees

Executive Duties

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight

Administrative Duties

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

Exempt and Nonexempt statement in your policy or handbook

- Under regulations set out in the Fair Labor Standards Act of 1938 (FLSA), as amended, overtime is not paid to exempt employees. Exempt employees are paid a salary, meet Federal salary requirements and perform certain Executive, Administrative, Professional duties.
- Each of your positions should be classified either Exempt or Nonexempt based on the FLSA.

Outline your overtime policy

- On occasion, an employee may be required to work more than the normal number of working hours in the official workweek.
- Employees who are covered by the overtime provisions of the Fair Labor Standards Act (FLSA) will be paid not less than one and one-half times their regular hourly rate for overtime worked during a workweek as required by applicable Federal and/or State law. Hours worked includes only those hours an employee works during the workweek. Approved time off, such as vacation, sick leave and holidays, do not count as hours worked for purposes of determining overtime pay eligibility. Nonexempt employees may not, under any circumstances, work overtime or outside of regularly scheduled hours without prior approval from their supervisor.
- All overtime services by employees covered under FLSA must be authorized in advance and approved by the employee's supervisor. Failure to receive proper authorization will result in discipline up to and including termination.

TEST TIME 😊

Your Office Manager is currently classified as a salaried, exempt employee. They make \$36,400/year or \$700/week. How would we handle this situation using the new OT Rules (Dec. 1, 2016)?

- Do Nothing, continue paying the OM as is.
- Raise the OM salary to at least \$913/week and keep them a salaried, exempt employee.
- Reclassify the OM as a salaried, nonexempt employee and pay OT (Comp Hours).

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Your Distribution Supervisor is currently classified as an hourly, nonexempt employee. The DS directly manages 5 full-time employees and has significant input when it comes to such things as hiring, firing, and advancement. They make \$30/hour. How would we handle this situation using the new OT Rules (Dec. 1, 2016)?

- Reclassify the DS as an hourly, exempt employee.
- Do Nothing, continue paying the DS as is.
- Reclassify the DS as a salaried, exempt employee and pay them a salary. No OT or Comp Time.

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A Treatment Plant Operator is currently classified as a salaried, nonexempt employee. The TPO makes \$55,000/year. How would we handle this situation using the new OT Rules (Dec. 1, 2016)?

- Reclassify the TPO as an hourly, nonexempt employee.
- Do Nothing, continue paying the TPO as is.
- Reclassify the TPO as a salaried, exempt employee and continue paying them a salary. No OT or Comp Time.
- Reduce their salary to \$47,000 and pay them OT.

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An hourly, nonexempt employee works 48 hours in a given work week. The employee makes \$30/hour. How much do we owe them for the week of work? (Note: the Monday of the workweek was "McKenzie County Mafia Day", a holiday recognized by some Rural Water Systems.)

- \$1,200
- \$1,560
- \$1,300
- Trick Question, they make more than \$913/week, so no OT.

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- \$1,200, no OT/Comp Time because of the Holiday
- ~~\$1,560~~
- ~~\$1,300~~
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Common Errors to Avoid

- Assuming that all employees paid a salary are not due overtime
- Improperly applying an exemption
- Limiting the number of hours employees are allowed to record

The FLSA Does Not Require

- Vacation, holiday, severance, or sick pay
- Meal or rest periods, holidays off, or vacations
- Premium pay for weekend or holiday work
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees
- Any limit on the number of hours in a day or days in a week an employee at least 16 years old may be required or scheduled to work
- Pay raises or fringe benefits

Employee Private Rights

- An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs
- A 2-year statute of limitations generally applies to the recovery of back pay. In the case of a willful violation, a 3-year statute of limitations may apply

Take home message

- Overtime pay must be paid to Nonexempt employees at one and one-half times the regular rate of pay (regardless of how you pay them) for hours worked in excess of forty hours in any one week.
- Paid holidays, paid time off, or sick leave are not counted in computing overtime hours.
 - If an employee works 44 hours in one week, but 8 hours is holiday/vacation/sick leave, no overtime is required.
- Overtime is computed on a weekly basis regardless of the length of the pay period.
- Hours worked may not be averaged over the pay period or used to offset shorter weeks
- Comp Time can be used for Poli-Subs
- Triple Check Exempt Status