

# COMPLIANCE OVERVIEW

Provided by Sapoznik Insurance

## FLSA – Overtime Pay

Under the FLSA, there is no limit on the number of hours employees may work in any workweek, but employees must receive **one and one-half times their regular wage rate** for all hours worked **over 40 hours** in a workweek. The FLSA does not automatically require overtime pay just for working on Saturdays, Sundays, holidays or regular days of rest.

However, the FLSA also allows certain employees an exemption from overtime payment requirements. The most common of these exemptions is known as the “white collar” exemptions, which apply to executive, administrative and professional (EAP) employees.

The DOL’s [Wage and Hour Division](#) enforces overtime wage provisions and investigates violation claims. This Compliance Overview provides a summary of FLSA overtime wage payment provisions.

### LINKS AND RESOURCES

- DOL Overtime Pay [website](#)

## HIGHLIGHTS

### OVERTIME PAY

- Overtime pay is one and one-half times an employee’s regular wage rate for every hour worked over 40 during a workweek.
- The FLSA does not automatically require overtime pay just for working on Saturdays, Sundays, holidays or regular days of rest.
- Overtime compensation is calculated on a weekly basis, unless an exemption applies; employers cannot average compensable time over two or more weeks.
- The FLSA provides several important exemptions from overtime wage payment requirements, including an exemption for executive, administrative and professional employees.

## OVERTIME PAY

The FLSA requires employers to pay their employees one and one-half times their regular wage rate for any hours they work over 40 during a workweek. To calculate this wage rate, employers must understand the FLSA's definition of regular wage rate, hours of work and workweek.

## WORKWEEK

Overtime compensation is calculated on a weekly basis. An employee's **workweek** is a fixed and regularly recurring period of **168 hours**—seven consecutive 24-hour periods. It may begin on any day, at any hour of the day. Different workweeks may be established for different employees or groups of employees.

## REGULAR WAGE RATE

An employee's overtime compensation is based on his or her regular wage rate. An employee's regular wage rate represents the average compensation an employee received per hour during a workweek. An employee's regular wage rate can vary from week to week and may be different from the employee's contractual rate of pay.

To calculate an employee's regular rate for a specific work period, employers must divide the employee's **total wages** for a workweek by the number of hours the employee worked during that workweek. Unless an exemption applies, averaging hours over two or more weeks is not permitted.

## TOTAL WAGES

An employee's total wages includes **all forms of compensation** given for employment, whether paid directly to or on behalf of the employee. When calculating an employee's total compensation, employers should exclude payments made at the employer's sole discretion and that are independent of any agreement or promise that may lead employees to expect a payment. For example, employers should exclude from total compensation:

- Gifts and monetary awards that are not measured by hours worked, productivity or efficiency;
- Irrevocable employee benefit contributions (such as life insurance, health benefits and retirement accounts);
- Paid time off (vacation, illness, holidays and production downtimes);
- Payments for overtime hours, holiday hours or work that falls outside a schedule set by an employment contract or collective bargaining agreement;
- Value or income derived from an employer-provided grant; and
- Value or income from stock option rights or stock appreciation and bona fide stock purchase programs.

The FLSA offers the following guidelines for calculating the regular rate for employees receiving a bonus, salary, commission, piece rate, day rate, job rate, book rate, flag rate, or a combination of two or more wage rates.

### *Employee Bonus:*

Employers must add an employee's bonus to the employee's wages and divide the total compensation given to the employee for that workweek by the total number of hours the employee actually worked during that workweek.

The same procedure applies to employees who receive additional wages for working unusual shifts.

*Salaried Employees:* To calculate a salaried employee's regular rate, an employer must divide the employee's weekly salary by the number of hours the salary is intended to compensate for that workweek. Employers should not use the actual number of hours an employee worked during the workweek for this calculation.

If an employee's compensation is a monthly or yearly salary, the employer must reduce the monthly or yearly salary to its weekly equivalent. The employer can then follow the same procedure described above to calculate the employee's regular and overtime rates.

If a salaried employee receives a bonus or commission, the employer must add this payment to the salary for the period in question before calculating the regular rate.

*Commissioned Employees:* Employers must include all commissions paid to an employee when calculating that employee's regular rate. Commission wages must be included in the pay period when they were earned, not when they are paid.

If an employer cannot tie a commission to a specific period, the employer should treat the commission as a bonus when calculating the employee's regular rate.

*Piece, Day, Job, Book and Flag Rate Wages:* To calculate overtime wages for employees paid on a piece, day, job, book or flag rate, employers can divide the employee's total earnings for a workweek by the total number of hours the employee worked during that same period.

*Employees Paid at Two or More Rates:* If an employee receives wages for work completed at two or more different rates during the workweek, an employer must calculate the employee's regular rate by using either the **weighted average method** or by using the rate for the job that caused the employee to work overtime.

Under the weighted average method, an employer must first calculate the total wages the employee earned during a workweek using all applicable rates. Then, the employer must divide the employee's wages by the total number of hours he or she worked at all jobs.

## HOURS WORKED

The FLSA requires employers to pay their employees for all hours of compensable work. In support of this requirement, federal law has issued guidelines to help employers figure out what is and is not compensable time. As a general rule, compensable time is time used in satisfying a principal activity and time spent in any activity that is essential and indispensable to the fulfillment of a principal activity.

Under this direction, employers should carefully consider whether their employees must receive wages for waiting time, on-call time, rest and meal periods, attending lectures, meetings and training periods or travelling. Contact Sapoznik Insurance for more information on work hour laws.

## THE WHITE COLLAR EXEMPTIONS

The white collar exemptions are minimum wage and overtime pay exemptions available to certain administrative, professional, outside sales, computer and highly compensated employees. To qualify for the white collar exemption, an employee must meet a **salary basis test**, a **salary level test** and a **duties test**. An employee must meet all three tests in order to be exempt from FLSA minimum wage or overtime pay requirements.

- The **salary basis test** is used to make sure the employee is paid a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of work.
- The **salary level test** is used to ensure that the employee meets a minimum specified amount to qualify for the exemption. This salary threshold provides employers with an objective and efficient way to determine whether an employee qualifies for a white collar exemption.
- The **duties test** requires that the employee's job duties conform to executive, administrative or professional duties, as defined by law. This analysis requires a more thorough evaluation of whether an employee can be classified in one of the categories mentioned above (administrative, professional, outside sales, computer and highly compensated employee)

## OTHER EXEMPTIONS TO OVERTIME PAYMENT LAWS

FLSA exemptions are narrowly defined. Employers should check the exact terms and conditions for each exemption carefully. The following examples are illustrative but not all-inclusive:

- Agricultural workers participating in farm-related operations, including water storage and water supply operations used for agricultural purposes and the sale or auction of livestock as a secondary activity, even when this secondary activity is subject to overtime regulation;
- Amusement park and recreational establishment employees are exempt for up to 56 hours of work in a workweek. Overtime regulations apply for any additional work time;
- Babysitters and companions for the elderly, when their employment is casual and they provide services for individuals that are unable (because of age or infirmity) to care for themselves;
- Cotton, beet, sugar beet molasses or sugar cane processing employees receiving, handling and storing these products are exempt for up to 10 hours per day or 48 hours per week during any 14 consecutive weeks in any 52-week period;
- Country elevator production workers working for an employer with no more than five employees, even when country elevator operations include the sale and service of farm equipment;
- Crew members and seamen working on foreign vessels;
- Criminal investigators receiving availability pay (compensation provided to criminal investigators for unscheduled services beyond the investigator's 40-hour workweek in activities that require irregular or unscheduled work hours);
- Delivery drivers and their helpers receiving tip rates or a delivery payment plan;
- Domestic service employees residing in the household where they work whose compensation is not classified as wages under the Social Security Act or that work for less than eight hours in a workweek;
- Electric railway, trolley or motorbus employees engaged in charter activities when their participation is voluntary and is not part of their regular duties;
- Employees subject to regulations from the U.S. Department of Transportation;
- Fruit and vegetable transportation employees;
- Individuals employed with their spouses by a nonprofit educational organization to watch over orphans or boarding school children who receive from their employer free board and lodging and wages of at least \$10,000 per year;

- Individuals who make natural pine, holly or other evergreen wreaths;
- Maple sap and syrup processing employees;
- Motion picture theater employees;
- Newly hired employees under 20 years of age during the first 90 consecutive calendar days following their hiring date (as long as the employer does not displace, fully or partially, other employees' work hours or benefits to accommodate new hires);
- Newspaper employees when the newspaper has a circulation of less than 4,000 and its major circulation is within the county (or contiguous counties) where the paper is published;
- Newspaper delivery employees;
- Outside buyers of raw or natural poultry, eggs, cream or milk;
- Radio or television announcers, news editors and chief engineers;
- Rail and air carrier employees;
- Retail and service employees when their regular rate is at least one and one-half times the minimum wage and they derive at least 50 percent of their income from commissions;
- Salesmen and mechanics working for a nonmanufacturing establishment primarily engaged in selling and servicing vehicles to ultimate purchasers;
- Seafood processing employees (individuals employed in the canning, catching, cultivating, farming, harvesting, packing, processing, propagating or taking of any kind of fish, shellfish, crustaceans, sponges, seaweeds and other aquatic forms of animal and vegetable life); and
- Switchboard operators working for an independently owned public telephone company having no more than 750 stations.
- Taxicab drivers; and
- Timber workers engaged in the planting, tending, cruising, surveying, transporting or felling of timber and working for employers with no more than eight employees;

## NOTICE AND POSTINGS

Unless an exemption applies, the FLSA requires employers to post a notice explaining the Act to their employees. The notice must be posted in every work establishment in a conspicuous place where employees regularly pass by and can easily read it. If an exception applies, employers may modify the [model poster](#) provided by the DOL to show what FLSA provision does not apply.

## RETALIATION

Employers may not discharge or discriminate in any manner against an employee who files a complaint or cooperates with the DOL in an investigation or proceeding.

## PENALTIES

FLSA violations are punishable by a **fine of up to \$10,000, imprisonment for up to six months or both**. In addition, these violations are subject to civil liability in state or federal courts and employers may be required to compensate employees for unpaid wages, liquidated damages and any other amount a court sees fit to impose. Fee amounts may increase for repeat and willful offenders.