

Overtime Pay: Common Problems and Solutions

Stanley A. Bastian, Jeffers, Danielson, Sonn & Aylward, P.S.

Overtime pay is an issue that continues to trouble many employers. The rules and regulations which come from both federal and state law, are times complex and difficult to apply to any given situation. However, the basic rule is very simple. Generally, the law requires most employers to pay overtime to employees who work more than 40 hours in a given work week at a rate of one and one-half times the employees regular rate of pay. Although the rule is easily stated, it is not so easily applied. This article attempts to answer some of the most frequently asked questions about overtime pay.

Are salaried employees entitled to overtime? Yes, many salaried employees are entitled to overtime pay. Unfortunately, this is probably the most common misunderstanding among both employers and employees. Simply paying an employee a monthly salary instead of an hourly wage does not solve the problem. The overtime laws contain many exemptions which provide that specific categories of employees are not subject to the overtime requirement, but being paid a salary is not one of them.

When is a salaried employee exempt from the overtime rules? The most common exemptions are for the so-called "white-collar" employees such as executives, administrators, professionals, computer professionals and outside sales employees. However, job titles alone are not sufficient to avoid the overtime requirements. To qualify as exempt, the employee must (1) perform the exempt duties of an executive, administrative, professional, computer or outside sales employee; and (2) be paid on a salary basis; and (3) be paid a salary equal to or greater than specific minimum salary requirements as defined by the U.S. Department of Labor, (usually at least \$455.00 per week).

The phrase "exempt duties" refers generally to the substantive duties an employee must perform to meet one of the overtime exemptions. Job titles are relevant but not dispositive when deciding whether an employee performs exempt duties. The key issue is what employees actually do, not what their job duties are in a job description.

Is the employer required to pay overtime compensation even if the overtime work is not authorized? Yes. Many employers have written policies in place which require that overtime must be authorized in advance. These policies are a good idea, but unfortunately not enough to protect the employer from the obligation to pay overtime compensation. If an employer knows that an employee has worked more than 40 hours in a work week even without prior approval, the employer is usually required to pay overtime compensation for the work. Therefore, in order to avoid paying overtime to employees who did not get permission to work extra hours, the employer needs both a rule prohibiting unauthorized overtime and a consistent practice of enforcing the rule.

Can an employer avoid paying overtime by offering compensatory time in lieu of overtime pay? No, for private employers. Public employers can in due use comp time as a way of avoiding overtime compensation for extra hours worked. Unfortunately, this practice usually does not work for private employers. The general rule is that private employers are not allowed by the law to offer comp time in lieu of overtime pay. This is the rule even if the employee agrees to take comp time. Such an employee can take the comp time and then file a lawsuit to recover the unpaid overtime compensation.

What are the penalties for not complying with the overtime rules? The penalties for noncompliance can be severe. Employees who believe they are owed overtime compensation may sue the employer in either federal or state court. If successful, the court can order the employer to pay double the amount of overtime wages claimed, the employee's attorney's fees and costs in bringing the lawsuit and interest on the amount of wages owed.

Can the employer and employee agree to waive or ignore the overtime requirements? No. Such an agreement will not be enforced by a court even if the employee voluntarily agreed to waive overtime pay prior to performing the work.

In conclusion, two basic rules should help employers avoid the most common mistakes. First, don't assume that your salaried employees are exempt from overtime compensation. Some are, but many are not. Second, don't try to avoid paying overtime by asking your employee to voluntarily waive overtime payments. Such agreements are usually not enforced by the courts.