Applying Advanced Wage and Hour Law:
Salaries for *NON-EXEMPT* Employees

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Second in an occasional series on advanced topics within wage and hour laws, this column lays the groundwork for how to compute overtime for salaried employees.

One of the more common misunderstandings about overtime is that employees who are paid a salary are automatically "exempt." While wage and hour laws do provide an exemption from minimum wage and overtime for certain so called "white-collar" employees who are (1) paid a salary and (2) meet specific job duties tests, payment of a salary alone does not set aside the requirement to compute and pay overtime for hours worked in excess of 40 in any given workweek.

The basic provisions of wage and hour law require that any *non-exempt* employees who work more than 40 hours in a given work week be paid at least one and one half times their regular rate of wage. So how does an employer compute and pay overtime for non-exempt employees who are paid a salary?

The answer to that question is a solid "it depends…." In this case, it depends on what kind of salary arrangement you have with a given employee. There are two basic types of salary arrangements applicable to non-exempt employees. The first of these is a salary that compensates a fixed number of hours of work. The second type compensates all hours of work whether few or many.

For salary arrangements that compensate a fixed number of hours worked, the employer's obligation is to compensate hours worked in excess of 40 at 1.5 times the "regular rate." For example, if an employee is hired at a salary of $525.00 for a 35 hour workweek, the employee's regular rate is $15.00 per hour ($525.00 / 35 hours). From here, overtime computations should feel pretty routine; if the employee were to work 50 hours in a workweek, he or she must be paid $15.00 per hour for the first 40 hours and $22.50 (1.5 times the regular rate) for each overtime hour worked. Total wages for the week would be $825.00.

With only a few exceptions, overtime is computed on the basis of a seven day workweek. So, where the salary represents a period other than a workweek, it will need to be reduced to its workweek equivalent. For example, a monthly salary would be converted to its weekly equivalent by multiplying the monthly amount by 12 to obtain an annual salary and then dividing that annual amount by 52 to obtain a weekly salary. The regular hourly rate can then computed using the same methods set out above.

The second type of salary is a predetermined amount paid for all hours worked, regardless of their number. This type of arrangement (often referred to as the "fluctuating workweek method") requires that (1) there is a clear mutual understanding that the employee will receive a fixed salary for the hours worked each week, whatever their number (as a best practice, get a written agreement here); (2) the amount of the salary provides compensation to the employee at no less than the applicable minimum wage; and (3) in addition to the fixed salary, the employee receives overtime compensation for all hours worked in excess of 40. Overtime must be compensated at 1.5 times the regular rate, but because the salary under this arrangement is intended to compensate all hours worked (including those in excess of 40), the employer's only remaining obligation will be to pay an additional one-half of the regular rate for each overtime hour.

The wrinkle here is that the number of hours actually worked may fluctuate from week to week and result in a "regular rate" (total weekly earnings divided by all hours actually worked) that needs to be computed each week. Calculating overtime using the "fluctuating workweek method" entails:

1. Reducing the salary to a weekly equivalent, if necessary.
2. Dividing the weekly salary by the total number of hours worked in the workweek to determine the employee's regular hourly rate for the week.
3. Multiplying the number of overtime hours worked by ½ the regular hourly rate to compute the additional overtime due.

For example, if an employee who is paid a $1,900 monthly salary on a fluctuating workweek basis logs 48 hours:

1. The weekly salary is $438.46/wk. ($1,900.00 x 12 = $22,800; $22,800 / 52 = $438.46)
2. The regular hourly rate is $9.13/hr. ($483.46 divided by 48 hours worked)
3. Additional overtime due is $36.52 (½ x $9.13 x 8 overtime hours)

In this example the employee would be due his or her salary of $1,900.00 plus overtime wages of $36.52 or $1,936.52 total wages.

Stay tuned! In an upcoming column we will unpack another salary option for compensating non-exempt employees – a hybrid of the salary arrangements we've just described called a Belo plan. Although they are not for everyone, a Belo plan may be just the thing for compensating employees with widely varying hours.

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