U.S. DEPARTMENT OF LABOR – WAGE AND HOUR DIVISION
TYPICAL REQUESTS

Subject Period is 2 or 3 Years from Date of Notice Letter

NO.	DOCUMENT REQUEST
1.	Documents sufficient to identify all businesses (including parent companies, management companies, subsidiaries, and trade names) associated with the Company at any time during the Subject Period by name, legal address, and agent for service of process and Federal Tax ID number(s);
2.	Documents sufficient to identify all corporate officers of the Company during the Subject Period by name, address, telephone number, officer status (ie President, Treasurer), and period of officer status
3.	Documents sufficient to identify all physical locations associated with the Company(s) by legal name, trade name, street address, mailing address, telephone number, and website address;
4.	Company organizational chart for all locations owned and operated by the Company;
5.	Documents sufficient to identify all accounting software used in preparation of the Company(s)'s financial documents and tax returns, including accountant(s)'s/tax preparer(s)'s name(s), street address(s), mailing address(s), and telephone number(s);
6.	IRS Forms 1120 (Corporate Tax Return), 1120s (S-Corporate Tax Return), 1065 (Partnership Tax Return), 1040 (Individual Income Tax Return), 990 (Not-for-Profit Tax Return), 941 (Quarterly Federal Tax Return), and/or 940 (Unemployment Tax Return) with all supporting work papers and schedules, and month end earnings reports for the Company(s) for the years ending: [Last 3-4 Tax Years].
7.	All monthly financial statements for the Company(s), in Excel format, including but not limited to, General Ledger, Chart of Accounts, Profit and Loss Statement, Statement of Income and Changes in Retained Earnings, Statement of Cash Flows and Balance Sheet for the Subject Period;
8.	All bank statements for all business accounts of the Company during the Subject Period;
9.	IRS Forms W-2, W-4, W-9, and 1099 for any all persons who worked for the Company(s) during the Subject Period;
10.	List in electronic format (Excel or CSV) showing all persons who are currently working for the Company(s) or who worked previously for the Company(s) during the Subject Period with their full name, address, telephone numbers, email addresses, federal tax id numbers, company names (if any), social security numbers, rate(s) of pay, hire and termination dates, and shifts worked;
11.	All records such as payroll records that show all payments made to all persons who worked for the company during the Subject Period, indicating gross pay, net pay, rate of pay, hours worked, overtime hours, and deductions by pay period provided in a structured Excel, CSV, file or other format that is searchable, filterable, and sortable (see the description of this below);
12.	All records such as timesheets and timecards that show the number of hours worked each workday and total hours worked each workweek by all persons who worked for the Company during the Subject Period provided in a structured Excel, CSV, file or other

	format that is searchable, filterable, and sortable (see the description of this below). If manual timecards are used, please provide PDF copies;
13.	All records of employees under the age of 19 who worked during the Subject period indicating date of birth date, positions held, rate of pay, shifts worked, total hours worked in a day/week, high school attended (if known), mother's and father's names (if known);
14.	All copies of independent contractor agreements to include terms of employment, rate of pay, date started, equipment/materials/vehicles required for the Subject Period;
15.	All records indicating clients served, contact name, address, phone number of location for the Subject Period
16.	Copy of policies related to pay, hours, holiday pay, paid time off and working conditions of all persons who worked for the Company during the Subject Period, including Company handbook, memoranda and emails
17.	List of all worksites in the last 3 months, worksite addresses, date of when work began on the worksite, and date of when work was completed.
18.	All records of government contracts obtained during the period of investigation.
	DOCUMENTS SUBPOENAED OFTEN
17.	Copies of the front and back of all canceled checks that cleared all financial accounts held by the Employer
18.	All loan/credit applications by the Employer
19.	Documents sufficient to show and explain all deductions, advances, and loans given to and recovered from all Workers
20.	Documents sufficient to identify the name and title of all Workers considered team lead, crew lead, foreman, supervisor, or superintendent for the Employer.
21.	Invoices or work orders relating to work done by any Worker during the Subject Period.
22.	Any Communication with Worker(s) during the Subject Period related to: 1) any directions given by the Employer, 2) work hours, or 3) compensation.
23.	List of all worksites where work was performed within the period of investigation, worksite addresses, date of when work began on the worksite, and date of when work was completed.

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

Revised September 2019

***Note:** The Department of Labor revised the regulations located at 29 C.F.R. part 541 with an effective date of January 1, 2020. WHD will continue to enforce the 2004 part 541 regulations through December 31, 2019, including the $455 per week standard salary level and $100,000 annual compensation level for Highly Compensated Employees. The final rule is available at: https://www.federalregister.gov/documents/2019/09/27/2019-20353/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and.

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the FLSA as defined by Regulations, 29 C.F.R. Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at not less than time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than $684* per week. Employers may use nondiscretionary bonuses and incentive payments (including commissions) paid on an annual or more frequent basis, to satisfy up to 10 percent of the standard salary level. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, administrative, professional, computer and outside sales employees, and for more information on the salary basis requirement.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than $684* per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $684* per week;
- The employee's primary duty must be 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; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $684* per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $684* per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than $684* per week **or**, if compensated on an hourly basis, at a rate not less than $27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
  1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  2. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of $107,432 or more (which must include at least $684* per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Blue-Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to "white-collar" employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other "blue-collar" workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Police, Fire Fighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #23: Overtime Pay Requirements of the FLSA

Revised October 2019

This fact sheet provides general information concerning the application of the overtime pay provisions of the FLSA .

Characteristics

An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

Requirements

Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, as such.

The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

The regular rate of pay cannot be less than the minimum wage . The regular rate includes all remuneration for employment except certain payments excluded by the Act itself. Payments which are not part of the regular rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the statutory exclusions noted above) in any workweek by the total number of hours actually worked.

Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs. In addition, section 7(g)(2) of the FLSA allows, under specified conditions, the computation of overtime pay based on one and one-half times the hourly rate in effect when the overtime work is performed. The requirements for computing overtime pay pursuant to section 7(g)(2) are prescribed in 29 CFR 778.415 through 778.421 .

Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the regular rate.

Typical Problems

Fixed Sum for Varying Amounts of Overtime: A lump sum paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money paid is equal to or greater than the sum owed on a per-hour basis. For example, no part of a flat sum of $180 to employees who work overtime on Sunday will qualify as an overtime premium, even though the employees' straight-time rate is $12.00 an hour and the employees always work less than 10 hours on Sunday. Similarly, where an agreement provides for 6 hours pay at $13.00 an hour regardless of the time actually spent for work on a job performed during overtime hours, the entire $78.00 must be included in determining the employees' regular rate.

Salary for Workweek Exceeding 40 Hours: A fixed salary for a regular workweek longer than 40 hours does not discharge FLSA statutory obligations. For example, an employee may be hired to work a 45 hour workweek for a weekly salary of $405. In this instance the regular rate is obtained by dividing the $405 straight-time salary by 45 hours, resulting in a regular rate of $9.00. The employee is then due additional overtime computed by multiplying the 5 overtime hours by one-half the regular rate of pay ($4.50 x 5 = $22.50).

Overtime Pay May Not Be Waived: The overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day or only 40 hours a week will be counted as working time also fails the test of FLSA compliance. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, also will not impair the employee's right to compensation for compensable overtime hours that are worked.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #56A: Overview of the Regular Rate of Pay Under the Fair Labor Standards Act (FLSA)

December 2019

This fact sheet provides general information regarding the regular rate of pay under the FLSA.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at not less than time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. Fact Sheet #22 provides general information about determining hours worked.

The amount of overtime pay due to an employee is based on the employee's regular rate of pay and the number of hours worked in a workweek. Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the statutory exclusions) in any workweek by the total number of hours actually worked to determine the regular rate. Fact Sheet #23 provides additional information regarding overtime pay.

The regular rate of pay is based upon actual facts and cannot be circumvented by an agreement. The regular rate may not be lower than the FLSA minimum wage or, where applicable, a higher state or local minimum wage. If the regular rate is higher than the federal FLSA minimum wage, overtime compensation must be calculated using that higher regular rate. Fact Sheet #23 provides additional information regarding the calculation of overtime pay.

The formula to compute the regular rate is:

Total compensation in the workweek (except for statutory exclusions) ÷ Total hours worked in the workweek = Regular Rate for the workweek

Exclusions from the regular rate

Under the FLSA, the regular rate includes "all remuneration for employment paid to, or on behalf of, the employee." The FLSA (29 USC § 207(e)) provides an exhaustive list of types of payments that can be excluded from the regular rate of pay when calculating overtime compensation. Unless specifically noted, payments that are excludable from the regular rate may not be credited towards overtime compensation due under the FLSA. Additional information regarding exclusions from the regular rate may be found in the regulations, 29 C.F.R. § 778.200-.225. The following types of payments are excludable from the regular rate:

Gifts and payments in the nature of gifts on special occasions

Sums paid as gifts, including payments in the nature of gifts made on holidays or on other special occasions, or as a reward for service may be excluded from the regular rate, provided the amounts of the gifts (or payments) are not measured by or dependent on hours worked, production, or efficiency. Examples include, but are not limited to, coffee, snacks, coffee cups, t-shirts, raffle prizes, certain sign-on bonuses, and certain longevity bonuses.

Payments for occasional periods when no work is performed due to vacation, holidays, or illness; reimbursable business expenses; and other similar payments

Payments for Leave: Employers may exclude from the regular rate certain payments made for occasional periods when no work is performed. This includes paid vacation, holiday, sick leave, and other paid time off. It also includes payments for occasional periods when the employer fails to provide sufficient work, such as when machinery breaks down, expected supplies do not arrive, or there is inclement weather.

Similarly, payments for unused paid leave (also known as paid leave buy-backs) or payments when the employee works instead of taking leave or a paid holiday, are not required to be included in the regular rate. In the case where an employee reports to work on the holiday and is paid for hours worked plus the holiday payment, the holiday payment is excludable from the regular rate, because it is not considered a payment for hours worked. Pay for unused leave is similarly excludable. The pay must be approximately equivalent to the employee's normal earnings for the period of time that is being "bought back." Such payment may be made during the same period when the employee forgoes leave or during a subsequent pay period as a lump sum.

Some employers provide paid meal breaks when employees are relieved from their work duties. Bona fide meal breaks are not hours worked and these payments do not automatically convert the time to hours worked. The pay for these meal breaks may be excluded from the regular rate, unless an agreement or established practice indicates the parties have treated the time as hours worked, in which case the payments must be included in the regular rate.

Reimbursement for business expenses: Reimbursement of the actual or reasonably approximate amount of expenses that an employee incurs while furthering the employer's interests may be excluded from the regular rate. Examples include, but are not limited to:

- Business supplies, materials, or tools
- Cell phone plans
- Membership dues in a professional organization
- Credentialing exam fees
- Travel expenses

Other similar payments that are not compensation for employment:

"Show-up" or "reporting" pay compensates an employee for when the employee reports to work as scheduled but is sent home early because there is insufficient work or the employee is not needed to complete the shift. Such payments may be excluded from the regular rate provided they are made on an infrequent and sporadic basis.

"Call-back" pay is extra compensation paid to an employee for responding to a call from the employer to perform extra work that was unanticipated by the employer. Such pay is in addition to the compensation for the time actually worked. Call-back pay may be excluded from the regular rate provided the call-back was not prearranged. Payments may be considered prearranged if the scheduling issue that necessitated the payment was anticipated and could have been reasonably scheduled in advance. The specific facts of the situation determine whether the employer anticipated the work and could have scheduled the work.

Some penalties imposed under state and local scheduling laws are similar to "show up" pay or "call-back" pay, and therefore may be excludable from the regular rate. See Fact Sheet #56B for additional information regarding state and local scheduling law penalties.

Additionally, a payment or the cost of a convenience provided to employees is excludable as an "other similar payment" only if there is no connection to hours worked, services rendered, job performance, or other criteria linked to the quality or quantity of the employee's work. These conveniences, often referred to as "perks," include, but are not limited to:

- On-the-job medical care and on-site treatment from specialists such as chiropractors, massage therapists, personal trainers, physical therapists, counselors, or Employment Assistance Programs
- Recreational facilities, such as gym access, gym memberships, and fitness classes

- Wellness programs, such as health risk assessments, vaccination clinics, nutrition and weight loss programs, smoking cessation, and financial counseling, and mental health wellness programs
- Employee discounts on retail goods or services
- Parking benefits and spaces
- Tuition payments, which includes payments for an employee's or an employee's family member's tuition, regardless of whether the payments are made to the employee, an education provider, or a student-loan repayment program
- Adoption assistance

Discretionary Bonuses

Such bonuses may be excluded from the regular rate only if:

- Both the fact that the bonus payment is to be made and the amount of the bonus payment are at the sole discretion of the employer at or near the end of the period; and
- The bonus payment is not made according to any prior contract, agreement, or promise causing an employee to expect such payments regularly.

The label assigned to the bonus and the reason for the bonus do not conclusively determine whether the bonus is discretionary. More information regarding discretionary bonuses is available in Fact Sheet #56C.

Profit-sharing plans

Payments made pursuant to a bona fide profit-sharing plan or trust or a bona fide thrift saving plan may be excluded from the regular rate.

Employer Contributions to Benefit Plans

Employers may exclude from the regular rate contributions irrevocably made by an employer to a trustee or third person as part of a bona fide plan for death, disability, advanced age, retirement, illness, medical expenses, hospitalization, accident, unemployment, legal services, or other events that could cause significant future financial hardship or expense.

Premium Payments for Non-FLSA Overtime

Extra compensation paid at a "premium rate" for certain hours worked by the employee because such hours are hours worked in excess of eight in a day, in excess of 40 hours in the workweek, or in excess of the employee's normal working hours or regular working hours, as the case may be, may be excluded from the regular rate of pay. Such payments may be credited towards overtime compensation due under the FLSA.

Extra compensation paid at a "premium rate" for work on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek may be excluded if the premium rate is at least equal to one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days. Such compensation may be creditable toward overtime pay due under the FLSA.

Extra compensation provided by a "premium rate" under an applicable employment contract or collective bargaining agreement for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding 40 hours) if the premium rate is at least equal to one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek. Such extra compensation may be creditable toward overtime pay due under the FLSA.

Stock Options

Any value or income derived from employer-provided grants or rights provided through a stock option, stock appreciation right, or bona fide employee stock purchase program meeting certain criteria may be excluded from the regular rate. See Fact Sheet #56 for more information.

General Principles:

- All compensation for hours worked, services rendered, or performance must be included in the regular rate.
- When a payment is a wage supplement, even if not directly related to employee performance or hours worked, it is still compensation for "hours of employment" and must be included in the regular rate.
- The determination of whether a particular payment, perk, or benefit may be excluded from the regular rate is made on a case-by-case basis applying the requirements set out in the statute to the specific circumstances.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

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WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #82: Fluctuating Workweek Method of Computing Overtime Under the Fair Labor Standards Act (FLSA) / "Bonus Rule" Final Rule

July 2020

Many employees have work schedules that vary from week to week. As a result, the total number of hours an employee works may increase or decrease from one week to the next. This type of schedule is called a "fluctuating workweek."

The FLSA requires that employers pay most employees in the United States at least the federal minimum wage for each hour they work. It also requires that they receive overtime pay at a rate of at least time and one-half their regular rate for each hour they work over 40 in a workweek. Some employees are paid hourly, while other employees are paid on a different basis, such as salary, commission, or piece rate. An employee's regular rate is calculated by dividing the employee's total pay (except for certain statutory exclusions) in any workweek by the total number of hours actually worked in that week. Fact Sheet #56A provides additional information about determining the regular rate.

Fluctuating Workweek Method

Many employers simply pay an hourly rate and overtime at time and one-half that hourly rate for each hour over 40. But there are also other allowable ways to compensate nonexempt employees and to calculate the overtime pay they are owed. Under the fluctuating workweek method, which is explained at 29 CFR 778.114, nonexempt employees receive a set weekly salary no matter how many hours they work, plus additional overtime pay when they work more than 40 hours in one workweek. In other words, the employee's weekly salary does not change whether the employee works 30 hours, 40 hours, or more. In weeks when the employee works more than 40 hours, the employee receives additional overtime pay for each hour of work over 40.

Under the fluctuating workweek method, overtime pay is based on the average hourly rate produced by dividing the employee's fixed salary and any non-excludable additional pay (e.g., commissions, bonuses, or hazard pay) by the number of hours actually worked in a specific workweek. The average hourly rate will change from week to week depending on how many hours the employee actually worked. The employee then receives at least an additional 0.5 times (or additional "half time") that rate for each hour worked beyond 40 in the workweek.

One condition for using this method is that the employer and employee agree that the set salary is compensation (apart from overtime premiums and any additional non-excludable pay) for all of their hours worked each workweek, whether they work few or many hours. To use the fluctuating workweek method, employees' hours actually must change on a week-to-week basis, and employees must receive the agreed-upon fixed salary even when they work less than their regularly scheduled hours.

Note: The fluctuating workweek method cannot be used if the employee's salary is understood to be compensation for a specific, fixed number of hours per workweek. For example, the fluctuating workweek method would not apply to employees of public agencies engaged in law enforcement or fire protection

activities who receive a salary as compensation for working specific, fixed hours within a work period (up to 28 days) under Section 207(k) of the FLSA. (For these employees, the basic principles of calculating the regular rate that apply to a "workweek" also apply in the same way to a "work period." See 29 CFR 553.233; WHD Opinion Letter FLSA 1216, 1986 WL 1171126 (Nov. 19, 1986).)

"Bonus Rule"/Final Rule

Effective August 7, 2020, the Fluctuating Workweek/"Bonus Rule" Final Rule clarifies that employers can pay bonuses or other incentive-based pay, such as commissions or hazard pay, above and beyond workers' fixed salaries when they are paid using the fluctuating workweek method. It also states that such payments must be included when calculating the regular rate unless they are excludable for some other reason explained in the law. See Section 207(e)(1) - (8) of the FLSA for information about payments that can be excluded from the regular rate.

When an employee receives non-excludable incentive pay such as commissions or hazard pay, it is added to the weekly salary to determine the total straight-time pay for the week. To calculate the average hourly rate, divide the total straight-time pay (salary plus non-excludable incentive pay) by the number of hours the employee actually worked that week. The employee then receives an additional 0.5 times (or additional "half time") of that rate for each hour worked beyond 40 in the workweek.

In the examples below, an employee works hours that change from week to week and is paid a fixed weekly salary of $600.00. The employee understands this fixed weekly salary will not change if hours of work increase or decrease.

Examples: Fixed Salary for Fluctuating Hours With and Without a Production Bonus

Workweek 1:

Employee's Salary	$600
No Bonus	+ $ 0
Total Straight-Time Pay	$600
Hours Worked	48

In workweek 1, the employee has earned the fixed weekly salary of $600 with no bonus pay. The employee worked 48 hours, and is due the weekly salary plus additional overtime pay at 0.5 times the average hourly rate, or "half-time," for the 8 overtime hours worked. To determine the overtime due and total compensation owed the employee, complete the following steps:

1. Determine the employee's average hourly rate. Divide the salary, $600, by the number of hours worked, 48 hours. The result is the average hourly or regular rate of $12.50. [$600 ÷ 48 = $12.50]
2. Next, multiply the average hourly rate, $12.50, by .5 to determine the half-time rate. In this case, the half-time rate is $6.25. [$12.50 x .5 = $6.25]
3. Multiply the half-time rate of $6.25 by the number of overtime hours worked, 8, to determine the total amount of overtime due, $50.00. [$6.25 x 8 = $50]

As a result, in workweek 1, the employee is due the $600 salary plus $50 in overtime pay for total compensation in the amount of $650. [$600 + $50 = $650]

Workweek 2:

Employee's Salary	$600
Production Bonus	+ $100
Total Straight-Time Pay	$700
Hours Worked	45

In workweek 2, the employee has earned the fixed weekly salary of $600 plus an additional production bonus. The employee worked 45 hours, and is due the weekly salary and the bonus plus additional overtime pay at 0.5 times the average hourly rate, or "half-time," for the 5 overtime hours worked. To determine the overtime due and total compensation owed the employee, follow the steps below:

1. Determine the total straight-time pay for the week. Add the fixed salary, $600, and the production bonus, $100, for a total of $700. [$600 + $100 = $700]
2. Determine the employee's average hourly rate. Divide the total straight-time pay, $700, by the number of hours worked, 45 hours. The result is the average hourly or regular rate of $15.56.

[$700 ÷ 45 = $15.56]

3. Next, multiply the average hourly rate, $15.56, by 0.5 to determine the half-time rate. In this case, the half-time rate is $7.78. [$15.56 x .5 = $7.78]
4. Multiply the half-time rate of $7.78 by the number of overtime hours worked, 5, to determine the total amount of overtime due, $38.90. [$7.78 x 5 = $38.90]

As a result, in workweek 2, the employee is due the $600 salary and $100 production bonus plus $38.90 in overtime pay for total compensation in the amount of $738.90. [$600 + $100 + $38.90 = $738.90]

Deductions from the Fixed Salary

The fluctuating workweek method can be used only if the salary does not change even when the number of hours worked increases or decreases. However, employers may take occasional deductions from the employee's salary for disciplinary reasons such as willful absences or tardiness or for infractions of major work rules, as long as the deductions do not violate the minimum wage or overtime pay requirements of the FLSA

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

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