



Overtime Analysis and other Wage Payment Rules

Presented to GRAPA
by
Michelle Pedzich, SPHR
Director of Compliance
HR Works, Inc.

November 18, 2010

www.hrworks-inc.com
(585) 381-8340



**“Assume nothing and look up
everything.”**



www.hrworks-inc.com
(585) 381-8340



Question

In recent years, the number of Federal wage and hour lawsuits have increased by an estimated:



1. 12%
2. 52%
3. 86%
4. 99%

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc. 

Answer

In recent years, the number of Federal wage and hour lawsuits have increased by an estimated:

1. 12%
2. 52%
3. **86%**
4. 99%

Source: Federal Department of Labor

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc. 

Question

What is the estimated percentage of employers who are out of compliance with Federal and state wage and hour laws?



1. 22%
2. 70%
3. 40%
4. 81%

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc.

Answer

What is the estimated percentage of employers who are out of compliance with Federal and state wage and hour laws?

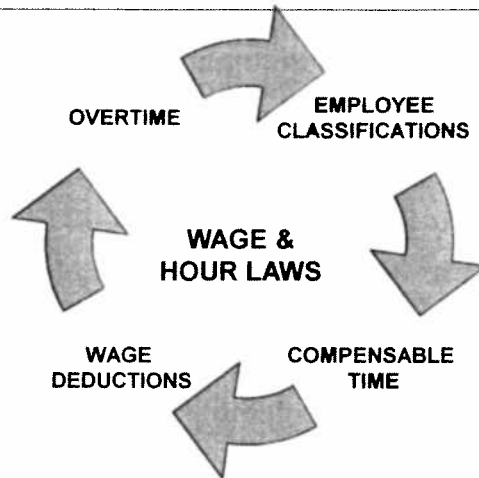
1. 22%
2. 70%
3. 40%
4. **81%**

Source: Federal Department of Labor

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc.

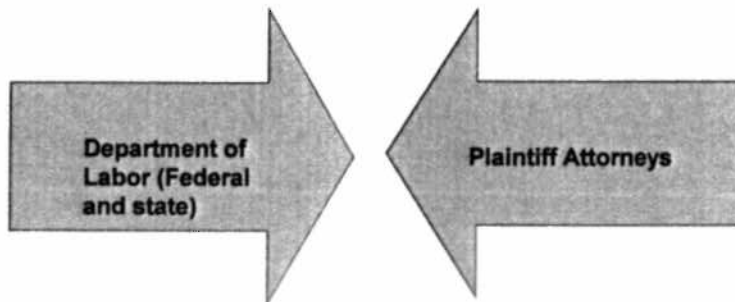
Wage & Hour Laws at a Glance



www.hrworks-inc.com
(585) 381-8340

HR Works, Inc.

How does a company get "caught"?



"This [wage and hour violations /overtime] is the biggest problem for companies out there in the employment area by far, I can hit a company with a hundred sexual harassment lawsuits, and it will not inflict anywhere near the damage that [a wage and hour suit] will."

J Nelson Thomas

www.hrworks-inc.com
(585) 381-8340

HR Works, Inc.

SOME OVERTIME BASICS

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc. 

What is a Workweek?

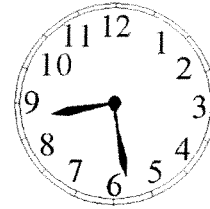
- Overtime must be determined separately for each “workweek.”
- With a few limited exceptions, you may not calculate overtime based on a period of longer than one workweek.
- A workweek is comprised of 7 consecutive 24-hour periods. The employer may choose the day/time the workweek begins-must be fixed and regularly occurring period of 168 hours.
- The employer may also establish different workweeks for different employees or groups of employees. The employer is limited only in that it cannot change a workweek to avoid the obligation to pay overtime wages.

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc. 

What are hours worked?

- Rules are complex...see DOL handout.
- “Hours worked” include all times the employee must be “on duty,” devoted to the principal work activity or activities that are closely related and indispensable to the principal work.



www.hrworks-inc.com
(585) 381-8340

HR Works, Inc. 

Employee Misclassifications

- Exempt/Non-Exempt versus Salary/Hourly
- Unless specifically exempted, employees must receive overtime pay for hours worked in excess of 40 hours in a workweek at a rate not less than one and a half times their regular rate of pay
 - Over-time pay may not be waived
 - Focus on the function and not the title
 - Updated job descriptions and consistency are key!



www.hrworks-inc.com
(585) 381-8340

HR Works, Inc. 

Exemptions under the FLSA

See handout.

- Professional
- Administrative
- Executive
- Highly Compensated
- Outside Sales
- Computer



In New York, the salary basis test to be exempt from overtime is \$543.75/week for administrative and executive professionals. At the Federal level, the salary basis test is \$455/week.

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc.

Exemption Red Flags

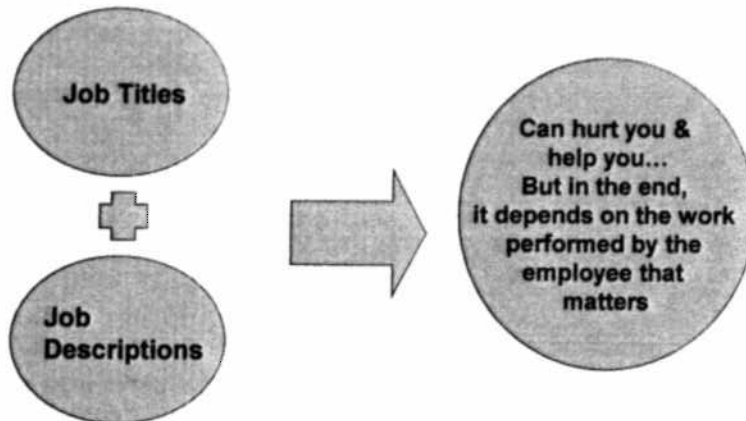
- Inconsistency in how employees are paid for the same job
- Basing exemption status on title and not job function
- Inside Sales employees exempt from overtime
- All employees with manager or supervisor titles are exempt
- Computer employees are exempt because their work is so difficult and important
- All employees are exempt



www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc.

Employee Classifications



www.hrworks-inc.com
(585) 381-8340

HR Works, Inc.

Question

Sally is hard-working and dedicated non-exempt employee. In her review, her manager rates her as stellar and comments in the review box that she "works 10 hour days and doesn't even expect to be paid for it". The manager comments on how much money she is saving the shareholders.

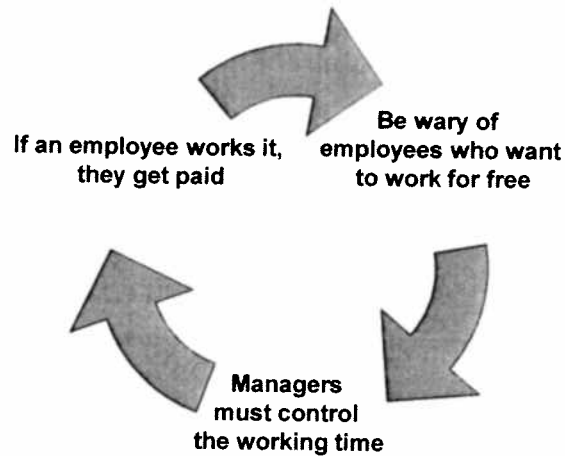


1. Sally is great...keep up the good work!
2. Sally is a lawsuit waiting to happen.

www.hrworks-inc.com
(585) 381-8340

HR Works, Inc.

Remember...



www.hrworks-inc.com
(585) 381-8340

HR Works, Inc.

Question

Tired of all the unapproved overtime, Stan puts out an email that says "None of you get it that I need to approve all overtime before it is worked. Anyone who works overtime without my approval will not be paid for the overtime." This policy is:

1. Legal- so long as he tells employees in advance of them working overtime and this is communicated in the employee handbook
2. Illegal
3. Legal- so long as he let's the employee work less hours then next week.



www.hrworks-inc.com
(585) 381-8340

HR Works, Inc.

Answer

Tired of all the unapproved overtime, Stan puts out an email that says "None of you get it that I need to approve all overtime before it is worked. Anyone who works overtime without my approval will not be paid for the overtime." This policy is:

1. Legal- so long as he tells employees in advance of them working overtime and this is communicated in the employee handbook
2. **Illegal**
3. Legal- so long as he let's the employee work less hours then next week.

www.hrworks-inc.com
(585) 381-8340

HR Works, Inc.

Question

Terri is a wonderful employee and she works for a private employer. This week she is working 55 plus hours on a big project, and in lieu of overtime pay, she asks her manager if she can apply 8 of those overtime hours to take an extra day off in 3 weeks to leave early for her high school reunion. This is a win/win for the manager, and he agrees. This is:

1. Illegal
2. Legal
3. Only legal if he gives her the comp time at time and a half.



www.hrworks-inc.com
(585) 381-8340

HR Works, Inc.

Answer

Terri is a wonderful employee and she works for a private employer. This week she is working 55 plus hours on a big project, and in lieu of overtime pay, she asks her manager if she can apply 8 of those overtime hours to take an extra day off in 3 weeks to leave early for her high school reunion. This is a win/win for the manager, and he agrees. This is:

1. Illegal
2. Legal
3. Only legal if he gives her the comp time at time and a half.

www.hrworks-inc.com
(585) 381-8340

HR Works, Inc. 

“Comp Time” Alternative

- Compensatory time **cannot** be offered to employees working for private employers.
- You **must** pay overtime if an employee works over 40 hours in a workweek.
- Public employers must offer at time & a half... public safety employees have different rules.
- You **CAN** allow an employee to flex his schedule in the **same workweek** to ensure that he doesn't work over 40 hours in the workweek.

www.hrworks-inc.com
(585) 381-8340

HR Works, Inc. 

Overtime and Multiple Rates of Pay

- See handout.

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc. 

OTHER ISSUES RELATED TO WAGES

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc. 

Question

Janine, the payroll clerk, realizes that she overpaid Sam by \$500 in his paycheck. Sam has direct deposit and the funds are already in his account. What can Janine do to correct the situation?



1. Ask Sam nicely to write a check to return the money. If he doesn't, take him to court.
2. In his next paycheck, reverse the amount. Have Sam sign-off acknowledging he understands the administrative error.
3. Deduct the overpayment in his next check as long as the deduction is not greater than 10% of his gross wages.

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc.

Answer

Janine, the payroll clerk, realizes that she overpaid Sam by \$500 in his paycheck. Sam has direct deposit and the funds are already in his account. What can Janine do to correct the situation?

- 1. Ask Sam nicely to write a check to return the money. If he doesn't, take him to court.**
2. In his next paycheck, reverse the amount. Have Sam sign-off acknowledging he understands the administrative error.
3. Deduct the overpayment in his next as long as the deduction is not greater than 10% of his gross wages.

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc.

NY Wage Deductions

- NY limits an employers ability to deduct money from an employees wages unless:
 - Deductions are made in accordance with a law, rule, or regulation issued by a governmental agency (i.e. social security, withholding taxes)
 - Deductions are “expressly authorized in writing by the employee and are **for the benefit of the employee**



www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc.

NY Wage Deductions

- Authorized deductions shall be limited to:
 - Payments for insurance premiums, pension or health and welfare benefits,
 - Contributions to charitable organizations,
 - Payments for US bonds,
 - Payments for dues or assessments to a labor organization, and
 - Similar payments for the benefit of the employee.

- Deductions must be authorized in writing

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc.

What's new...

- NYS DOL reversed its earlier position and stated that an employer **MAY NOT** deduct money from an employee's wages after overpaying an employee (i.e. cannot deduct overpayment from future paychecks)
- NYS DOL has changed course on deductions that were previously permitted

www.hrworks-inc.com
(585) 381-8340

HR Works, Inc. 

Monetary and Supportive

- Benefits must be "monetary and supportive" when interpreting the term "similar payment"
 - Monetary = deductions that are investments of money for the later benefit of the employee such as deductions for insurance premiums, pension or health and welfare benefits and payments for US bonds
 - Supportive = deductions that are used by someone **other than the employee or the employer** to support some purpose of the employee such as donations to charity or payments of union dues or assessments

www.hrworks-inc.com
(585) 381-8340

HR Works, Inc. 

What does this all mean?

- If an employer overpays an employee, the employer cannot recover the overpaid wages through deductions
 - Ask for return of money (not through payroll)
 - Cannot discipline if they refuse to pay
 - May bring a civil suit against employee to recover overpayment of wages

www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc. 

Homework

- Review your current deductions from pay!
- Are these “monetary and supportive”?
 - Loan payments (outside of 401(k)/retirement plans)
 - Payroll advances
 - Tuition advances
 - Deductions for “overuse of vacation” from last paycheck
 - Cell phone overage amounts
 - Tool deductions
 - Deductions for company store items/ company services



www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc. 

Other NYS Wage Payment Issues

- Delay of pay for not completing time sheets
- Holding pay until company property is returned
- Requiring direct deposit for most employees
- Refusing to provide a hard copy of a paystub



www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc.



Questions?

Michelle L. Pedzich, SPHR
pedzich@hrworks-inc.com



www.hrworks-inc.com
(585) 381-8340

HR-Works, Inc.



Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning what constitutes compensable time under the FLSA. The Act requires that employees must receive at least the minimum wage and may not be employed for more than 40 hours in a week without receiving at least one and one-half times their regular rates of pay for the overtime hours. The amount employees should receive cannot be determined without knowing the number of hours worked.

Definition of "Employ"

By statutory definition the term "employ" includes "to suffer or permit to work." The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. "Workday", in general, means the period between the time on any particular day when such employee commences his/her "principal activity" and the time on that day at which he/she ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production line time.

Application of Principles

Employees "Suffered or Permitted" to work: Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.

Waiting Time: Whether waiting time is hours worked under the Act depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time). For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait."

On-Call Time: An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.

Rest and Meal Periods: Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.

Sleeping Time and Certain Other Activities: An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least 5 hours of sleep is taken.

Lectures, Meetings and Training Programs: Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed.

Travel Time: The principles which apply in determining whether time spent in travel is compensable time depends upon the kind of travel involved.

Home to Work Travel: An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

Home to Work on a Special One Day Assignment in Another City: An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.

Travel That is All in a Day's Work: Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

Travel Away from Home Community: Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

Typical Problems

Problems arise when employers fail to recognize and count certain hours worked as compensable hours. For example, an employee who remains at his/her desk while eating lunch and regularly answers the telephone and refers callers is working. This time must be counted and paid as compensable hours worked because the employee has not been completely relieved from duty.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> 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.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

Determining If Your Employees Are Exempt or Non-Exempt under the Fair Labor Standards Act

Category	Salary Basis Test	Job Duties Test (Primary Duty)	Clarify Job Duties Test	Examples
Executive	<ul style="list-style-type: none"> Federal level: \$455/wk or \$23, 660 + annually, exclusive of board, lodging, other allowances & facilities. New York State: \$543.75 + per week, exclusive of board, lodging, other allowances & facilities. 	<ul style="list-style-type: none"> Management of the company or customarily recognized department or subdivision of company (having permanent status & continued function). Exercises discretionary powers. Authority or particular influence to handle, recommend, suggest: hiring, firing, promotion, advancement, change of status of employees. Regularly directs work of 2+ FTE's or equivalent. 	<ul style="list-style-type: none"> Determine techniques to be used and type of supplies, merchandise, materials, machinery, equipment, & tools to be bought, stocked & sold. Provide for the safety, security of employees or property. Plan and control the budget. Monitor or implement legal compliance measures. 	<ul style="list-style-type: none"> President Regional Sales Director Controller VP of Operations Department Manager (with 2+ FTE's)
Administrative	<ul style="list-style-type: none"> Federal level: \$455/wk or \$23, 660 + annually, exclusive of board, lodging, other allowances & facilities. New York: \$543.75 + per week, exclusive of board, lodging, other allowances & facilities. 	<ul style="list-style-type: none"> Responsible for Office or non-manual work directly related to the management or general business operations of the employer or the employer's customers. Regularly exercises discretion & independent judgment with respect to matters of significance. 	<ul style="list-style-type: none"> Work must be directly related to assisting with the running/servicing of the business. Does not include working on manufacturing production line or retail selling. 	<ul style="list-style-type: none"> Office/Business Mgr. HR Manager Marketing Manager <p><i>If exercises discretion and independent judgment with regards to matters of significance.</i></p>
Professional	<ul style="list-style-type: none"> Federal level: \$455/wk or \$23, 660 + annually, exclusive of board, lodging, other allowances & facilities. New York Salary Basis Test does <u>not</u> apply to Professional Exemption 	<p>Performance of work requiring knowledge of an advanced type (defined as work which is predominately intellectual in character, and which includes work requiring consistent exercise of discretion and judgment) in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction;</p> <p>Performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor;</p> <p>Teaching, tutoring or lecturing if employed as a teacher in a school system or educational institution.</p>	<p>Advanced knowledge can be acquired through combination of work experience and intellectual instruction.</p> <p>Not routine mental, manual, mechanical or physical work.</p> <p>Cannot be attained at a high school level.</p>	<p><u>Learned</u></p> <ul style="list-style-type: none"> Doctor Scientist Lawyer (not Paralegals) Accountant (not Bookkeepers) Licensed Architect (no Drafters) Licensed Engineers (not Techs) Registered Nurses (not LPN's) <p><u>Creative</u></p> <ul style="list-style-type: none"> Actor Composer Journalist Editor <p><u>Academic</u></p> <ul style="list-style-type: none"> Teacher Professor
<ul style="list-style-type: none"> Learned Prof. Creative Prof. Academic Prof. 				

<p>Computer Software Professionals</p>	<ul style="list-style-type: none"> ● Federal level: \$455/wk or \$23, 660 + annually, exclusive of board, lodging, other allowances & facilities. Also hourly computer professionals, if paid more than \$27.63/hr. 	<ul style="list-style-type: none"> ● Application of systems analysis techniques & procedures, including consultation with users to determine hardware & software specifications; ● Creation or modification of computer programs based on system design specs or machine operating systems; ● Or combination requiring equivalent skills. 	<p>Applies only to highly skilled employees. Trainees & entry level workers do not qualify.</p>	<ul style="list-style-type: none"> ● Systems Analyst ● Computer Programmers ● Software Engineers <p>Not covered: help desk IT professionals & technicians</p>
<p>Outside Sales Personnel</p>	<p>No salary test.</p>	<ul style="list-style-type: none"> ● Selling tangible or intangible items; or ● Obtaining orders or contracts for services or use of facilities; and ● Regularly & customarily works away from the employer's place of business. 		
<p>Highly Compensated</p>	<ul style="list-style-type: none"> ● Federal level: \$455/wk or \$100,000 + annually, exclusive of board, lodging, other allowances & facilities. 	<p>Office or non-manual work & must perform at least one of the exempt duties listed above (i.e. executive administrative, professional).</p>	<p>Not covered: production line workers, non-management laborers in maintenance and construction.</p>	<p>Not covered: longshoremen, construction, carpenters, craftsmen, plumbers, iron workers, electricians, operating engineers, mechanics, non-management maintenance laborers, production line worker</p>

HR Works, Inc. is not engaged in rendering legal services. If legal advice is required, the services of a competent labor attorney should be sought.

Human Resources Fact Sheet

- Subject:** Fair Labor Standards Act
- Topic:** Regular Rate Definition for Overtime Pay
- Focus:** Definition of Discretionary Bonuses

Supreme Court says: "The hourly rate actually paid the employee for the normal, non-overtime workweek for which he is employed"

For any week in which the non-exempt employee works greater than 40 hours, the "regular rate" must be calculated in order to determine the overtime rate that should be paid.

The regular rate includes "all remuneration for employment paid to, or on behalf of, the employee," such as:

- Non-discretionary bonuses
- Per Diem pay
- On-call pay
- Waiting time
- Incentives

There are 7 exclusions, the most common are:

- Gifts paid at special times that are not measured by or dependent on hours worked, production or efficiency
- Pay for no work: vacation, sick, holiday, PTO, certain types of traveling expenses
- Discretionary bonuses and talent pay
- Contributions made by an employer under a bona fide plan for pension, life, accident or health insurance or similar benefits;

One of the most problematic exclusions is the definition for **Discretionary Bonuses**

Two states must exist in order for a bonus to be considered discretionary (and therefore, excluded in the regular rate):

1. the fact of payment must remain an option of the employer, and
2. is determined by the employer without prior promise or agreement.

Examples:

If an employer has promised, in advance, to pay a bonus, discretion has been abandoned (#1).

If an employer announces in January that employees will be paid a bonus in June, he has abandoned discretion regarding the fact of payment.

An employer who promises to pay sales employees a monthly bonus computed on the basis of allocating \$1 for each item sold whenever, in her discretion, the financial condition of the company warrants such payments, has abandoned discretion with regard to the amount of the bonus (#2), but not with regard to the fact of payment (because of its dependency on the financial condition of the company).

Using the above example, the bonus is excluded if it were paid without prior contract, promise or announcement, and the decision as to the fact and amount of payment lay in the employer's sole discretion.

Bonuses set in advance to induce increased production, hours or efficiency, are not discretionary. Similarly, bonuses for service, attendance, quality or accuracy of work, and sign-on and retention bonus are not discretionary.

Employees Working at Two or More Rates

In the situation of an employee who works two different jobs at two different rates of pay, the FLSA allows two different methods of computing the regular rate for overtime calculation purposes: 1) the weighted average and 2) the regular rate associated with the job that caused the overtime to occur. The "default method" under the regulations is the weighted average method, found in 29 C.F.R. 778.115. The other method is allowed under section 207(g)(2) of the Act and is explained in regulation 29 C.F.R. 778.419. The two regulations that deal with those methods are shown below (the first deals with the weighted average method, and the second deals with the other method), along with examples of each:

29 C.F.R. 778.115 – Employees working at two or more rates.

Where an employee in a single workweek works at two or more different types of work for which different non-overtime rates of pay (of not less than the applicable minimum wage) have been established, his regular rate for that week is the weighted average of such rates. That is, his total earnings (except statutory exclusions) are computed to include his compensation during the workweek from all such rates, and are then divided by the total number of hours worked at all jobs. Certain statutory exceptions permitting alternative methods of computing overtime pay in such cases are discussed in 778.400 and 778.415 through 778.421.

Example of how to use the weighted average method:

An employee works 40 regular and 4.5 overtime hours at \$10 per hour for clerical work at the office. During the same workweek, she also works eight hours at \$8 per hour answering the phone at her house, resulting in 52.5 total hours worked at both jobs during the workweek.

If you are using the weighted average method, you would take her earnings from the clerical job (44.5 hours at \$10/hour, or \$445.00) plus her earnings from answering the phone at home (8 hours at \$8/hour, or \$64.00), to get a total of \$509.00. You then divide the total earnings by the total hours ($\$509.00 / 52.5$) to arrive at the weighted average regular rate of \$9.70 per hour. Now, remember that the total earnings of \$509.00 represent the straight-time pay she has earned for the 52.5 hours, i.e., she has already been paid straight time for those hours, and so she only needs half-time for the 12.5 overtime hours to bring her up to the required time and a half. Half-time for the weighted regular rate is \$4.85/hour, so multiply that times the 12.5 overtime hours and add it to the straight-time pay to get the total pay for the workweek. That would be \$4.85 times 12.5, or \$60.63, and that added to \$509.00 equals \$569.63, the total pay including overtime. A mistake sometimes made is to compute the weighted average correctly, but then apply it erroneously, such as by taking the weighted average, multiplying it by 1.5, and then multiplying that times the number of overtime hours worked and adding that to the straight-time pay. Such a calculation ($\$509.00$ plus 12.5 hours at \$14.55 per hour) would result in a figure of \$690.88, which would actually result in a large overpayment. The first thing to remember is that when you do a weighted average, it is as if you are pretending that she really worked "x" number of hours at the weighted average rate. The second main thing to keep in mind is that the weighted average times the number of hours worked equals the total straight-time earnings for the workweek, and an employee only needs to be paid the straight time once. Any time you use an overtime calculation method that depends upon a total straight time figure, the overtime hours will be paid at "half time", instead of time and a half. A similar situation exists in the case of employees who are paid a fixed salary for fluctuating workweeks. The salary in that particular case is considered

Now, imagine that the phone work at home is done Tuesday through Friday. The situation would then be a bit more complicated, since both jobs would contribute toward the overtime. The 40-hour point would be reached two hours into the Friday shift for the clerical work at the office. The six hours remaining at the office on Friday, plus the two hours working the phone at home that evening, plus the 4.5 hours at the office on Saturday, would be the overtime hours for that workweek. The total would still be 12.5 hours, but there would be two regular rates involved. The overtime pay would consist of 10.5 hours at 1.5 times the regular rate for the office work, plus two hours at 1.5 times the regular rate for the phone work at home. Her pay would be calculated as follows:

34 hours times \$10.00/hour \$340.00 Straight time
6 hours times \$8.00/hour \$48.00 Straight time
10.5 OT hours x \$10/hour x 1.5 \$157.50 Overtime
2 OT hours x \$8/hour x 1.5 \$24.00 Overtime
Total: \$569.50

One can see from these examples that the end results are often very close to each other and that the result with the second method depends upon the exact mix and timing of the overtime hours.

Source: http://www.twc.state.tx.us/news/eft/e/employees_two_rates.html