



"Extra" Pay And Overtime Headaches

Insights

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A recent \$4 million settlement between the U.S. Labor Department and a Texas healthcare employer highlights a recurring overtime issue under the federal Fair Labor Standards Act.

USDOL reported that Harris Health System has agreed to rectify alleged violations arising largely from failing to compute overtime wages on various kinds of incentive compensation paid to non-exempt employees. USDOL's press release provided no details with respect to the kinds of additional pay involved.

The Basic Principles

Overtime compensation for employees subject to the FLSA's overtime provisions must be based upon the "regular rate" of pay. The regular rate is normally determined by dividing the total wages paid for a workweek by the total hours worked in that workweek for which those wages are paid.

This calculation must include "all remuneration for employment" paid to or on behalf of a non-exempt employee, subject only to limited exceptions. Overtime premium must therefore be computed and paid on most commissions, bonuses, shift-differentials, retroactive pay increases, good-attendance or longevity payments, and many other sorts of compensation far too numerous to list. If the employer does not take all includable compensation into account in figuring overtime pay, then the worker has received less than the FLSA-required wages.

An Illustration

The Big Corporation pays a \$500 bonus to each non-exempt employee who achieves an average Customer Satisfaction Rating of at least 95% for an Evaluation Period consisting of four complete workweeks. Annie does this for an Evaluation Period in which she worked 42 hours in one of the workweeks, 50 hours in another one, and 40 hours in the others. Annie is paid on an hourly basis, and she has already received her proper overtime wages due at her hourly rate for the two overtime workweeks.

Paying Annie only the \$500 would not comply with the FLSA; she is also due overtime premium pay on the bonus. Her total bonus-related payment comes to:

$(\$500 \text{ Bonus} \div 4 \text{ Workweeks}) = \$125 \text{ Workweek-Equivalent Bonus}$

$[(\$125 \div 42 \text{ hrs.}) \times \frac{1}{2} \times 2 \text{ OT hrs.}] = \$2.98 \text{ OT Premium Pay}$

$[(\$125 \div 50 \text{ hrs.}) \times \frac{1}{2} \times 10 \text{ OT hrs.}] = \$12.50 \text{ OT Premium Pay}$

$(\$500 + \$2.98 + \$12.50) = \$515.48.$

Annie's FLSA overtime premium is figured at one-half of her regular rate, because the underlying bonus represents the "one" of "one and one-half".

Note that, contrary to what is often said of such situations, it is not necessary to go back and "recalculate" anything in order to do as the FLSA requires. Instead, because Annie has already been paid the proper overtime compensation on her hourly-based wages, her employer need only figure the overtime premium due on the bonus itself.

The Bottom Line

Employers should ensure that all compensation for work either is properly included in computing FLSA overtime for non-exempt employees or may lawfully be excluded from that calculation.