



## Quick Quiz Answer: Day-Rate Pay Plans

### Insights

5.15.13

The best answer to our May 8, 2013 Quick Quiz is, "\$110.00". In declining percentage order, the responses were:

"None": (80.4%)

"\$110.00": (15.7%)

"\$137.50": (3.9%)

"\$412.50": (0.0%)

### Does The FLSA Allow Day-Rate Plans?

The federal Fair Labor Standards Act *does* permit employers to pay non-exempt workers on a day-rate basis. See 29 C.F.R. § 778.112. Under this approach, employees receive a fixed amount of daily pay for each workday on which they perform any work, regardless of the number of hours worked in the workday. The day-rate payments represent straight-time compensation for all work done in the workweek, both those hours worked up to 40 and those worked over 40.

But the point we intended to illustrate is that a day-rate payment cannot "include" or "build in" any FLSA overtime premium pay, no matter how the day-rate sum was set. Cf. 29 C.F.R. §§ 778.310, 778.500. When a day-rate employee works more than 40 hours in a workweek, he or she must receive FLSA overtime premium pay in addition to the total day-rate wages for the workweek. Figuring the overtime amount due begins with the proper computation of the FLSA regular hourly rate of pay.

Because the employee's total day-rate pay is remuneration for *all* hours worked in the workweek, the regular rate is determined by dividing the person's total day-rate compensation for the workweek by his or her total hours worked in that workweek. Of course, this regular rate can never be less than the FLSA minimum wage (or any higher required rate). This also assumes that the employee has received no *other* compensation that must be included in the regular rate.

The total day-rate pay is compensation for both straight-time *and* overtime hours (in other words, it is the "one" of "one and one-half"). Therefore, the employee is due an additional 50% of the regular rate times the FLSA overtime hours worked.

### **How Is Technician Tom's Total Pay Determined?**

For these reasons, Technician Tom is due additional FLSA overtime premium pay for his ten overtime hours worked, despite how his day-rate payment was established. The overtime amount is calculated this way:

$$(\$1,100 \text{ Day-Rate Pay}) \div (50 \text{ Hrs.}) = \$22.00 \text{ Per Hr. Regular Rate}$$

$$(\$22.00 \text{ Per Hr.} \times 50\%) = \$11.00 \text{ Per Hr. OT Premium Rate}$$

$$(\$11.00 \text{ Per Hr.}) \times (10 \text{ OT Hrs.}) = \$110.00 \text{ OT Premium Due.}$$

Technician Tom's total pay for the workweek is therefore  $(\$1,100.00 + \$110.00) = \$1,210.00$ . If he had instead worked 45 hours in the workweek, then his total pay would have been:

$$(\$1,100 \text{ Day-Rate Pay}) \div (45 \text{ Hrs.}) = \$24.44 \text{ Per Hr. Regular Rate}$$

$$(\$24.44 \text{ Per Hr.} \times 50\%) = \$12.22 \text{ Per Hr. OT Premium Rate}$$

$$(\$12.22 \text{ Per Hr.}) \times (5 \text{ OT Hrs.}) = \$61.10 \text{ OT Premium Due.}$$

$$(\$1,100 + \$61.10) = \$1,161.10.$$

As always, employers must also take into account the relevant requirements of different laws and the laws of other jurisdictions. It is important to ensure that whatever overtime computation the employer uses complies with *all* of the applicable overtime provisions.