



Overtime Work Is Not A By-The-Job Matter

Insights

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Recent reports have described more than one scenario in which an employer violated the federal Fair Labor Standards Act because management failed to recognize that non-exempt employees' hours worked over 40 in a workweek were overtime ones. The employees had performed their work in more than one position during the week, such that their time spent in any *particular* job did not exceed 40 hours. However, an employee's hours worked in *all* of the positions in which he or she was engaged for the employer in the week totaled more than 40.

For example, one set of circumstances involved non-exempt restaurant employees. Several of them typically worked around 25 hours as kitchen assistants for part of a week and about 20 hours as waitstaff at other times in the week. Because no such employee worked more than 40 hours either as a kitchen assistant or as waitstaff member when the positions were viewed separately, the employer did not consider any of their (25 hrs. + 20 hrs.) = 45 total hours worked to be FLSA overtime.

The threshold for FLSA overtime wages is not applied job-by-job. Instead, the FLSA requires that ***all*** of an employee's hours worked for the employer in ***every*** job be ***combined*** to determine whether the employee has worked more than 40 hours in a single workweek. If the employee has done so, then he or she is due the FLSA-required overtime pay for the hours worked over 40. Therefore, when one of the restaurant employees worked a total of 45 hours in both jobs in a workweek, he or she should have received the proper overtime compensation for (45 Total Hrs. – 40 ST Hrs.) = 5 overtime hours.

This state of affairs can arise in any industry or setting. FLSA overtime requirements are not limited to a by-the-position, by-the-department, or by-the-location measurement. Every employer should be certain that what might be a spreading "Everybody Does It" misconception has not taken root in the employer's own organization.