Quick Quiz Answer: Overtime For Multi-Rate Employees

Insights
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The best answer to our October 8 Quick Quiz is, "Either Of The Above". There are two permissible ways to approach Sarah's overtime compensation under the federal Fair Labor Standards Act. In declining percentage order, the responses were:

"$802.50": (44.9%)

"Neither Of The Above": (30.8%)

"$808.50": (20.5%)

"Either Of The Above": (3.8%)

Basing Overtime On A "Weighted Average" Rate
One alternative is to calculate her overtime premium at one-half of the "weighted-average" regular rate of pay. *See*, *e.g.*, 29 C.F.R. § 778.115. This approach is in a sense the standard one and is therefore probably the more-common computation.

It calls first for totaling all of Sarah's compensation figured at her hourly rates and then for dividing that sum by all of her hours worked (including the ones exceeding 40 in the workweek). The resulting weighted-average rate represents the "one" of the "one and one-half" overtime rate required by the FLSA. So she is due additional overtime premium pay equal to one-half of the weighted-average rate multiplied times her hours worked over 40 in the workweek:

[(45 Hrs. × $15.00) + (5 Hrs. × $12.00)] = $735.00 Total ST Wages
($735.00 ÷ 50 Hrs.) = $14.70 Per Hr. Weighted-Average Regular Rate
[($14.70 ÷ 2) × 10 OT Hrs.) = $73.50 OT Premium Pay
($735.00 + $73.50) = $808.50 Total FLSA Wages.

Of course, the weighted-average regular rate can never be lower than the FLSA's minimum wage, currently $7.25 per hour.

Figuring Overtime At The "Rate In Effect"
The other alternative is based upon the FLSA's Section 7(g)(2). It involves paying not less than 1.5 times the established, bona fide, straight-time hourly rate applying to each different kind of work

that is being performed during the hours worked over 40 in the workweek. In our hypothetical, Sarah's total FLSA wages under this "rate in effect" calculation are:

(40 ST Hrs. × $15.00) = $600 ST Wages
(5 OT Hrs. × 1.5 × $15.00) = $112.50 OT Wages
(5 OT Hrs. × 1.5 × $12.00) = $90.00 OT Wages
($600 + $112.50 + $90.00) = $802.50 Total FLSA Wages.

Among the requirements for using this alternative are that:

◊ There must be an advance agreement or understanding with the employee that this method will be used;

◊ The kinds of work for which the different rates are paid must themselves be different;

◊ Each different rate must be a bona fide one, including that the rate is not less than the FLSA's minimum wage and is the rate actually paid for the work when it is performed in non-overtime hours;

◊ The overtime hours for which the overtime rates are paid qualify as overtime ones under the FLSA; and

◊ The number of overtime hours for which the overtime rates are paid is not less than the number of hours worked over 40 in the workweek.

See, *e.g.*, 29 C.F.R. § 778.419.

In this particular scenario, the rate-in-effect approach produces a lower wage total. However, this will not always be so. Considerations such as which straight-time rates are paid for what kinds of work, and whether and to what extent particular kinds of work are performed in overtime hours, will affect the respective sums due under the two alternatives.

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