Quick Quiz Answer: Piece-Rate Pay Under The FLSA

Insights
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The correct answer to our July 1 Quick Quiz is "$25". The results were:

"$54.38": (7.1%)

"$60": (32.1%)

"None, because she is paid at a piece-rate.": (33.9%)

"$25": (21.4%)

"$20": (5.4%)

One point we wanted to illustrate is that an employee is not exempted from the federal Fair Labor Standards Act's overtime-compensation requirements just because he or she is paid at a piece-rate.

The key to the correct response lies in properly determining Anne's "regular rate" of pay for purposes of calculating the FLSA overtime compensation she is due. The FLSA regular rate for a particular workweek is figured by dividing the employee's total compensation for that workweek by the total number of hours worked in that workweek for which the compensation was paid. *See*, *e.g.*, 29 C.F.R. §§ 778.109, 778.111.

So How Is Her FLSA Overtime Calculated?
In the hypothetical, Anne's straight-time compensation for her 45 hours of work is (300 Devices × $1.50) = $450. Therefore, her FLSA regular rate of pay is ($450 ÷ 45 Hrs.) = $10.00 per hour. Her FLSA regular rate is higher than both the $7.25-per-hour minimum wage and her $8.00-per-hour guaranteed rate.

Her $450 in piece-rate pay represents the "one" of the "one and one-half" overtime rate required by the FLSA, so she must be paid additional half-time overtime premium at a rate of ($10.00 ÷ 2) = $5.00 per hour. Consequently, under the FLSA, Anne is due for this workweek the sum of ($5.00 × 5 OT Hrs.) = $25 in overtime premium pay, for total FLSA wages of ($450 + $25) = $475. *See*, *e.g.*, 29 C.F.R. § 778.111.

There Is Another Approach.

The FLSA authorizes an alternative way to figure piece-rate overtime pay. FLSA Section 7(g)(1) permits the employer to do this by paying at least 1.5 times the piece-rate(s) applicable to the pieces or units produced during overtime hours.

Assume that Anne had assembled 270 devices in her first 40 hours worked in the workweek and another 30 devices in her next five hours worked in that workweek. If Anne's employer had instead adopted the Section 7(g)(1) method of calculating her overtime, her FLSA total gross wages would have been:

(270 Devices × $1.50) = $405 Wages For First 40 Hours

[($1.50 × 1.5) × 30 Devices] = $67.50 Wages For Overtime Hours

($405 + $67.50) = $472.50.

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 piece-rate must be a *bona fide* one (that is, it is the rate actually paid for the work when it is performed in non-overtime hours);

◊ The employee's average hourly earnings for the workweek (not counting overtime premium pay and certain other amounts) must come to at least the FLSA minimum wage;

◊ The overtime compensation must come to at least 1.5 times the minimum wage for the overtime hours worked;

◊ The proper FLSA overtime compensation must also be paid on other kinds of pay the employee receives (such as production bonuses) that are includable in the regular rate.

Of course, employers must always take into account the applicable requirements of different laws or the laws of other jurisdictions, and it is especially important to ensure that other such requirements permit this alternative.