



What Is A "9/80" Pay Plan?

Insights

5.26.12

A compressed schedule colloquially called a "9/80" pay plan seems to be making a comeback. Under this arrangement, the federal Fair Labor Standards Act "workweek" and the schedule for non-exempt employees are set so that the employees work:

- ◇ Nine days in a two-workweek period, but
- ◇ Not more than 40 hours in either workweek.

How Does It Work?

Under a typical 9/80 arrangement, the non-exempt employee works four 9-hour days, followed by an 8-hour workday day that is split into 4-hour portions by the mid-day ending of the first workweek, and then works four more 9-hour days in the second workweek. The key is that the employee's workweek ends *during* the 8-hour workday, causing the first four hours worked that day to fall into one workweek and the remaining four hours worked that day to fall into the next workweek. In this way, the employee's hours worked in each workweek do not exceed 40.

If the employee *actually works* exactly what the schedule calls for during the two workweeks, then no FLSA overtime pay is due for either workweek.

But whatever management's expectations might be as to the scheduled, usual, or ordinary worktime for the employees, the employer still must pay FLSA overtime to every non-exempt employee who ends up working more than 40 hours in either workweek. For example, if in one workweek an employee works three 9-hour days, one 10-hour day, and one 5½-hour day for a 42½-hour total in the workweek, the worker would be entitled to 2½ hours of FLSA overtime pay for that work.

Other Important Considerations

Most employers must change the affected employees' FLSA workweek in order to adopt a 9/80 plan. As we have said in another post, employers changing the workweek should follow a U.S. Labor Department protocol used to evaluate whether an employee has worked any FLSA overtime during the pay-period in which this change occurs in order to ensure that the worker receives the proper FLSA compensation for any such overtime.

An approach that passes muster under the FLSA must still be evaluated against, and take into account the implications of, the applicable laws of other jurisdictions in which the employer employs

people. For instance, if a state's law requires overtime premium pay for hours worked over 8 in a workday, then the 9/80 plan will result in an obligation to pay daily overtime to employees in that state.