



## Balancing Labor Costs And Wage-Hour Laws

Insights

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Employers' continued struggles with labor costs have led to additional hourly-rate cuts, salary reductions, furloughs, layoffs, and similar conventional measures. But are there other potentially less-disruptive *and legal* options? There might well be.

### What Does The Law *Really* Require?

For one thing, management should purge pay plans and policies of any expensive misconceptions about what the law does and does not require. For instance, some employers believe that non-exempt employees' unworked paid-time-off for holidays, sick days, or even vacation days must be counted as hours worked when computing overtime under the federal Fair Labor Standards Act. This is not so, and eliminating this unworked paid-time-off from FLSA overtime calculations could result in appreciably lower wage costs.

Also, some state wage-hour laws are considerably more employee-favorable than either the FLSA or similar laws in other jurisdictions. Whether through misunderstanding or for other reasons, some organizations employing people in multiple states pay all employees as if they work in the jurisdiction with the highest wage requirements. As an example, a multi-state company might pay non-exempt Georgia employees overtime for hours worked over eight in a workday (even though Georgia does not require this), because the company is legally obligated to do so for similar California workers.

### What Pay Alternatives Might There Be?

Employers should also consider relatively-straightforward measures that could cut or at least minimize labor expense.

One illustration relates to the seven-day "workweek" that employers must select and document in order to comply with the FLSA's overtime requirement. Most employers must of course pay non-exempt employees FLSA overtime premium for all their hours worked over 40 in a single workweek. While the workweek cannot be changed retroactively or frequently to evade the FLSA's obligations, the workweek *can* be re-established on a lasting, going-forward basis. And employers can choose different workweeks for different groups of employees or for different locations. If patterns of activity unique to a particular department or facility typically add up to overtime hours under the workweek that applies company-wide, then the employer could consider whether adopting a separate workweek just for that department or facility would decrease or eliminate the overtime

costs.

Management should also consider whether helpful FLSA exemptions, exceptions, or refinements might be available. Some of these measures might affect wage costs directly. Others might streamline the payroll process so as to reduce administrative expense. Still others might tie compensation more closely to productivity so as to increase revenue (see our [post](#) on the Section 7(i) exemption, for example). Of course, in today's legal environment, it is essential to evaluate these matters carefully before acting. Possible missteps flowing from near-term financial pressures will ultimately be self-defeating or worse if they provoke million-dollar litigation.

As always, employers must be certain that whatever they decide to do for FLSA purposes is also permitted under all applicable state and local laws, under special "prevailing wage" requirements, and so on.

And whatever the law permits, employee morale is obviously an important consideration. However, employees might well react favorably to measures that avoid more-stringent steps, such as layoffs.