



What Is A "Workweek", And Why Should You Care?

Insights

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Many compensation policies and similar documents refer to wages for non-exempt employees in the context of a "week", a "pay week", a "pay period", "the schedule", an "overtime week", a "pay cycle", or some other ambiguous word or phrase.

But the timeframe that matters under the federal Fair Labor Standards Act is a term-of-art: A "workweek". For instance, with few exceptions, FLSA overtime pay is due for a non-exempt employee's hours worked over 40 in a single *workweek*, which is not necessarily the same thing as the calendar week or an employee's scheduled week or pay period.

A Specific Meaning

An FLSA workweek is a fixed, regularly-recurring period of 168 hours – that is, seven, consecutive, 24-hour periods – that the employer expressly adopts in order to maintain FLSA compliance. See, e.g., 29 C.F.R. § 778.105. FLSA recordkeeping regulations require covered employers to select *and document* at least one such workweek. 29 C.F.R. § 516.2(a)(5). The workweek can be set to begin on any calendar day and at any time of day, but thereafter the employer must apply that workweek in complying with the FLSA.

If an employer has not designated and documented a workweek, or if it computes pay based upon some timeframe other than the applicable workweek, this can lead to non-compliance. As an illustration, for the overwhelming majority of employees whose overtime must be determined on a workweek basis, the FLSA's requirements are *not* satisfied by paying overtime based just upon the number of hours worked over 80 in a two-week period or upon worktime exceeding 86.67 hours in a semi-monthly period.

What the workweek is can also affect what pay is due to an employee who must be paid on a "salary basis" in order to qualify for a particular FLSA exemption. For example, the FLSA "salary basis" exemption principles say that the salary need not be paid for any workweek in which the employee performs no work. However, to decide whether these are the circumstances, one has to know what workweek applies to that employee in the first place.

Room For Variation

An employer is permitted to have more than one workweek under the FLSA, and the workweek does not have to be the same for every group of employees or for every location. It is possible to establish different FLSA workweeks for different groups, for different locations, or even for different people.

Variations in work patterns or tendencies in different workforce segments can sometimes mean that it is advantageous to adopt a different workweek for a particular group or location, or even for a few particular employees.

It is possible to change a workweek, of course. But an employer may neither do this frequently nor otherwise manipulate the workweek so as to produce a purported series of non-overtime workweeks. Once the workweek has been established, it remains fixed regardless of the employees' schedules or numbers of hours worked.

Other Jurisdictions?

Employers should also check into any applicable laws of a state or other jurisdiction to see whether there are any workweek-related requirements or restrictions that are different from or tougher than the FLSA's.

For example, some states' laws impose notice requirements that might be implicated by a change in the workweek.