



Quick Quiz Answer: FLSA Overtime On Commissions

Insights

6.16.10

The federal Fair Labor Standards Act does *not* require overtime to be calculated in the way shown in our June 11 post. The overtime amount the FLSA *actually* calls for is about 30% of the figure shown there.

The reason is that an employer need not divide the workweek-equivalent commissions by 40 and then multiply 1.5 times that rate times the overtime hours. Instead, the workweek-equivalent commissions are divided by *all* of that workweek's hours, and the overtime premium pay is computed at *one-half* of the resulting regular hourly rate multiplied times the overtime hours. Thus, the facts hypothesized in the June 11 illustration should produce this amount:

$(\$2,307.69 \div 45 \text{ hrs.}) = \51.28 Regular Rate

$(\$51.28 \times \frac{1}{2}) = \25.64 Half-Time Premium Rate

$(\$25.64 \times 5 \text{ Overtime Hours}) = \128.20 Overtime Premium Pay

U.S. Labor Department interpretations supporting this method are found in the Code of Federal Regulations at 29 C.F.R. §§ [778.119](#), [778.120](#).

The rationale for the above calculation is this: The Mortgage Loan Officer was paid the workweek-equivalent commissions as compensation for *all* of her hours worked in the overtime workweek (as is virtually always the case with commissioned employees), rather than only for the first 40 hours. Those commissions therefore represent the "one" of "one and one-half" for those overtime hours, such that only the extra half-time overtime premium is due. The half-time premium rate is based upon dividing the weekly-equivalent commissions by all of her hours worked in that workweek, and then dividing by two.

Erroneous information on this subject is making its way around the Internet, so beware. Employers are of course free to pay more than the FLSA requires if they wish, but it is important to have a clear understanding first of what is and is not legally necessary.

