



Quick Quiz: FLSA Overtime On Commissions

Insights

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The blogosphere is providing mixed signals about how to figure commission overtime under the federal Fair Labor Standards Act. There is particular discussion on this point where Mortgage Loan Officers are concerned, now that the U.S. Labor Department opined in March that the "typical" one is non-exempt. However, the FLSA overtime principles are the same for any commissioned employee who is subject to that law's overtime requirements.

To provide a framework to illustrate those principles, we ask that you reflect upon a hypothetical calculation and then give us your opinion. We will provide the answer next week.

Assume that a non-exempt Mortgage Loan Officer who is paid solely on a commission basis (without any draws) earns \$10,000 in commissions for deals closed during a calendar month. In the four workweeks ending in that month, she worked 35.7, 45, 38.3 and 40 hours.

Her employer allocates the commissions on a weekly basis by multiplying the \$10,000 times 12 and dividing by 52, for a weekly-equivalent amount of \$2,307.69. The Loan Officer is paid overtime wages for the 45-hour workweek, which her employer computes this way:

$(\$2,307.69 \div 40 \text{ hrs.}) = \57.69 Regular Rate

$(\$57.69 \times 1.5) = \86.54 Overtime Rate

$(\$86.54 \times 5 \text{ Overtime Hours}) = \432.70 Overtime Pay

Is this the way the FLSA requires her overtime pay to be calculated?

[Editor's Note: Click [here](#) for the answer.]

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