

## **SALARIED EMPLOYEES MAY STILL BE ENTITLED TO OVERTIME**

**QUESTION:** One of my long-term employees, John, has been telling his co-workers that he wants to file a wage claim against me. I happened to overhear him complain that he is working an average of 50 hours a week and that he thinks he's getting far too little salary for all that work.

What he is not sharing in these conversations is the fact that even though his salary never changes, he has not been meeting the production goals I have established for him. While I am sympathetic to his situation, the fact is that I am in business to make money. When he doesn't meet his production goals it directly impacts our profits, so the fact is that he's lucky I don't cut his salary.

Besides, John has been paid a salary since he started working here. I've never told him he would be paid overtime, and I wouldn't even know how to calculate overtime for a salaried employee. So it seems that this is sour grapes and I don't have to worry about a wage claim...correct?

**ANSWER:** Actually, that is probably not correct. A common - but serious - misconception of employers is that paying an employee a salary relieves the employer of the responsibility to pay overtime. And there are several situations where a salaried employee might indeed be "exempt" from overtime.

But simply putting an employee on a salary is not enough; the employee must also be doing the kinds of duties that qualify him or her for an exemption. These are generally referred to as "white collar" exemptions, and you can find more information about them on our website at [www.oregon.gov/boli/ta](http://www.oregon.gov/boli/ta).

The reality is that most employees are not exempt and must be paid overtime. We will thus assume, for the rest of our answer, that your employee is non-exempt and entitled to overtime.

Overtime must be paid at the rate of 1.5 times the regular rate for all hours over 40 in a "workweek." A workweek is simply a tool for measuring overtime, and it is not necessarily the same as an individual employee's work schedule. While an employee's schedule can change every week, a workweek must always be a regularly-recurring period of seven consecutive 24-hour periods.

The workweek may begin on any day and hour the employer chooses, as long as it repeats on a regular basis. For example, if your workweek began on Saturday at midnight, it would have to begin on the following Saturday at midnight, and every Saturday at midnight thereafter.

So assuming John is a non-exempt, salaried employee, how do you calculate his overtime? As with all other non-exempt employees, a non-exempt salaried employee's overtime must be calculated at 1.5 times the employee's "regular rate" of pay.

A regular rate is always an hourly rate. If the employee is paid on an hourly basis, that amount is automatically the regular rate. If the employee is paid a salary like John, the regular rate is determined as follows:

- Multiply the monthly salary by 12 to get the annual salary;
- Divide the annual salary by 52 to get the weekly salary;
- Divide the weekly salary by the number of hours the salary is intended *to* compensate.

Note that this is a different calculation than if we were figuring overtime based on varying rates of pay or on a commission, etc. In those cases, we would divide the salary by the number of hours actually worked, not the number of hours established in the employee's original agreement with the employer.

The result of this calculation will be the regular rate, and you must pay time and one-half that rate for all hours worked over 40 in the workweek. If your original agreement with John was that he was to work 40 hours a week, you would always divide his weekly salary by 40. This is true even if he works 50 or more hours in any particular week. You would be better off paying John the overtime and then talking to him about why he is having so much trouble getting his work done.

For more information on this and other important information affecting Oregon employers, including seminars given by our Technical Assistance Unit, please visit our website. You can also call us at 971-673-0824.