

RICH OR POOR, OVERTIME LAWS APPLY TO MOST EMPLOYEES

QUESTION: I own a small hardware store, and Ann is my best employee. I pay her by the hour, and she gets what she's worth: let's just say that it is WAY above minimum wage. Because Ann gets such a large hourly wage, I don't pay her overtime. The way I look at it is that the overtime is "built into" her generous compensation. I've also heard that certain "highly-paid" employees don't have to be paid overtime, even if they are paid hourly. So it seems that one way or the other, I'm off the hook for paying overtime. Right?

ANSWER: Actually, that is probably *not* right. If Ann is a non-exempt employee (and most employees are), she must be paid overtime. And as far as overtime being "built into" a wage, it simply does not work that way. Rather, there is a specific formula you must use to determine how much overtime is owed.

As mentioned in last week's column, employers must pay 1.5 times the employee's regular rate for all hours worked over 40 in a seven-day workweek. "Regular rate" is always an hourly rate, and in this case it would simply be the amount you always pay your employee per hour. (Next week, we'll talk about calculating the "regular rate" when you pay in other ways, such as in commissions or with different rates for different types of work).

For example, let's say you pay Ann \$50.00 per hour. If she works 42 hours one workweek, she earns 40 hours of pay at her regular hourly rate (often referred to as straight time), and 2 hours of overtime. The total compensation due to her - including overtime - is computed as follows:

- 40 hours @ \$50.00, her regular hourly rate = \$2000.00
- 2 hours of overtime @ 1.5 (overtime rate) X \$50.00 (her regular hourly rate) = 2 X \$75.00 = \$150.00
- \$2000.00 straight time + \$150.00 overtime = \$2150.00 total compensation for a 42 hour workweek.

You also mentioned that you may not have to pay Ann overtime if she is paid over a certain amount. This is a particularly confusing issue in Oregon, because there are in fact federal regulations stating that if an hourly employee earns at least \$100,000 per year and performs certain types of white collar duties, the employee may be exempt from overtime. But since Oregon did not adopt these regulations, they do not apply in our state and are unavailable to Oregon employers.

Other Notable Overtime Facts:

- Employers may require employees to work overtime.

- Employers may discipline employees who work unauthorized overtime, but must nevertheless pay the offending employee for the overtime hours worked.
- Overtime is only required for actual hours worked. Sick days, vacation days or other hours not actually worked need not be included when determining if an employee has worked over 40 hours in a workweek.
- Overtime is triggered when an employee has worked over 40 hours in a workweek, regardless of whether the employee exceeds the number of hours in his or her regular weekly work schedule. For example, an employee who regularly works 30 hours per week is not entitled to be paid overtime for any hours worked more than 30 and less than 40. Rather, overtime will only kick in at the same time it does for others - when the employee has worked over 40 hours in the workweek.
- In a few industries, such as manufacturing, Oregon law requires daily as well as weekly overtime.

For more information about this and other important issues affecting Oregon employers, including seminars conducted by BOLI's Technical Assistance Unit, please visit our website at www.oregon.gov/boli/ta. You can also call our information line at 971-673-0824.

Check out next week's column for more on calculating overtime!