

SALARIED EMPLOYEES MAY BE ENTITLED TO OVERTIME PAY

QUESTION: On occasion we need the receptionist in our office to stay an hour or so later than her usual shift to greet clients arriving for after-hours meetings. She has never complained about these extra hours before, but the last two weeks she has had to stay late every single work day and she has let us know that she either wants to start leaving on time every day or we need to pay her extra when she has to work late.

Can we require her to stay late when the work demands it?

Also, she earns a good salary -- would we still have to pay her overtime if we require her to stay late?

ANSWER: Yes and yes. Subject to a few specific statutory exceptions, employers may determine employees' work hours, including requiring employees to work extra hours beyond their regular schedules.

However, the general rule is that employers are required to pay employees at the overtime rate after forty hours in a workweek.

There are some employees, called exempt employees, who are exempt from this overtime requirement. State and federal statutes provide descriptions of the classifications of employees who are exempt. In order to properly classify an employee as exempt from overtime, employers must be sure the employee satisfies certain specific duties requirements in addition to being paid on a salary basis. In addition, according to recently enacted federal law (**rules?**), an employee is only exempt if they earn a salary of at least \$455 per week.

As you can see, paying an employee on a salary basis is only one of the elements that comprise exempt status.

Employees who do not fall within any of the narrowly interpreted statutory descriptions of exempt employees are called non-exempt – meaning they are not exempt from the general overtime pay requirements.

Although your office receptionist is paid on a salary basis, the job duties of a traditional receptionist position do not satisfy the duties or requirements of any of the statutory exempt employee categories. Thus, even if her salary meets the minimum \$455 established by federal law, the receptionist should be classified as non-exempt and therefore is entitled to be paid the overtime rate of pay for all the hours she works over 40 in a workweek.

In other words, you may require the receptionist to work extra hours, even if the extra time results in her working overtime. However, even if she is paid a salary, if she is a non-exempt employee, you must pay her at the overtime rate of pay for all hours over 40 worked in a workweek. You should also go back and pay the receptionist at the overtime rate for any overtime hours she worked in weeks when she received just her salary.

The overtime rate of pay includes all remuneration unless excluded by statute. But how does an employer calculate an employee's overtime rate when the employee is paid a salary instead of hourly?

An employer should calculate the overtime rate for an employee who is paid a salary, by first dividing the employee's annual salary by 52 (the number of weeks in a year) to determine the weekly salary. Remember - overtime is measured on a workweek basis.

If the employee receives a monthly salary, multiply the monthly salary amount by 12 (months), then divide by 52.

Divide the weekly amount by the number of hours the salary is intended to compensate - often this is forty hours.

For example, if an employee receives an annual salary of \$20,000:

Determine the weekly salary: \$20,000 divided by 52 equals \$384.61.

Determine the hourly pay by dividing by the number of weekly hours the salary is intended to compensate: \$384.61 divided by 40 equals \$9.61.

Determine the overtime rate of pay: \$9.61 multiplied by 1 and 1/2 (time and a half) equals \$14.42 per overtime hour (each hour over forty in a workweek).

Note that it does not matter if your employee would like to be paid in some other way for her overtime hours: this is the method that the law requires you to use. Of course, you could always get an exempt employee to perform the "meeting and greeting" duties in her place!

For more information affecting Oregon employers as well technical assistance seminars available from BOLI, please visit our website at www.oregon.gov/boli/ta.