

## **SISTERHOOD IS POWERFUL, UNLESS IT COSTS YOU OVERTIME**

**QUESTION:** I own “Kate’s Truck Stop” which is a gas station/convenience store. A few months ago, my sister Kimberly proposed opening a cafe adjacent to “Kate’s” so that she could benefit from my customer traffic. I thought it was a great idea; Kimberly is an awesome cook and her cafe will also lure a lot of customers in my direction.

In order to avoid buying any real estate, Kimberly designed her cafe to connect to my store on a portion of our family property. And since I have more entrepreneurial experience than she does, we decided to become business partners. “Chez Kim’s” is slated to open next week, and we have arranged for a few of my employees to work part-time for her until she gets her bearings.

The problem is, the employees who are planning to work for “Kim’s” are already working full-time hours for me at “Kate’s.” And one of them just told me that in order to determine whether she’s owed overtime, I have to count the hours she works at both places.

But that seems crazy – we set up different businesses precisely so we could avoid this type of expense! Do we have to pay them overtime if they work fewer than 40 hours for either of us individually, but over 40 hours for the two of us combined?

**ANSWER:** As is so often the case, it depends. In this situation, it depends upon whether a “joint employment” relationship exists between you and your sister.

“Joint employment” describes the situation in which an employee works for more than one employer, but the employers have enough in common to be considered “one” under state and federal wage and hour laws. And if the employers meet this threshold and an employee works for both of them in a workweek, all of the hours must be counted to determine whether overtime is owed.

Whether a particular arrangement translates into “joint employment” is based upon all the circumstances in that individual case. The courts have used the following factors to make this determination:

- whether the employers share an employee’s services;
- whether the employer acts directly or indirectly in the interest of the other employer; and
- whether the employers are not disassociated with respect to an employee and share control of the employee; for example, where one employer controls, is controlled by, or is under common control with the other employer.

Let's apply this test to "Kate's" and "Kim's." The fact that you invested in the cafe and made room on family- owned property is probably not sufficient to establish a joint employment situation. But the fact that you and Kimberly are partners means common ownership, which may support the common control necessary to establish joint employment. You also both benefit from each other's businesses, and you are already starting to "loan" your employees back and forth.

All of these things point heavily in the direction of a joint employment relationship, and to the probability that in addition to everything else you and your sister share, you may share an overtime obligation.

This does not mean that your employees will get paid overtime twice. It simply means that in addition to everything else you share as sisters, an overtime obligation may be one of them. If this is the case, you can of course work it out between yourselves as to which pocket the money will come out of.

If the employees earn different rates of pay, take a look at last week's column which explained how to calculate the amount of overtime due to employees working at different hourly rates. Bon A petit!

For more information about this and other important issues affecting Oregon employers, including seminars presented by our Technical Assistance Unit, check out our website at [www.oregon.gov/boli/ta](http://www.oregon.gov/boli/ta). You can also call us at 971-673-0824.