

IT'S "MOCK" APPLE CIDER, BUT THE MANUFACTURING RULES ARE REAL

QUESTION: The holidays are very busy for us - we make mock apple sparkling cider, and the demand for our fine mixture goes up exponentially from Thanksgiving through New Year's Day.

We have a fairly small production area, and we employ fewer than 100 employees; most are long-term. These things help us ensure that we produce only the finest libation.

Our business has been growing steadily since we expanded our marketing efforts to include online orders. Despite that growth, we have added very few new employees, because the existing crew prefers to put in extra hours to earn overtime dollars for the holidays.

However, we recently created a new position and hired a comptroller to oversee the financial side of things to help us manage all this growth. According to her, we are not allowed to have employees working more than 13 hours in a work day. Also, she says we should be paying employees the overtime rate when they work over 10 hours in a single work day. She says this is based on laws applicable specifically to manufacturing establishments.

Although some of the mock apple sparkling cider production process is mechanized, much of it we still do by hand, the old-fashioned way. In fact, we see ourselves more as chefs - not as manufacturers.

Do the rules to which she refers apply to us?

Also, if the special rules do apply to us, what about the employees who process phone and internet orders, and who pack and ship the mock apple sparkling cider? They often volunteer to work double shifts during the holidays, which means 16 hours of work in a row. Does the special rule about a 13 hour day apply to them, too?

ANSWER: If your business is a manufacturing establishment, as defined by Oregon law, the employees involved in the manufacturing of the cider are indeed subject to special rules regarding overtime pay and maximum work hours.

The general overtime rule requires employers to pay employees time-and-half the regular hourly rate of pay for all hours the employee works beyond 40 in a workweek. This general rule measures the number of overtime hours an employee works during an entire workweek, without regard to the number of hours an employee works during individual work days.

However, your new comptroller is correct: special state laws apply to employees in mills, factories, and manufacturing establishments.

If your operations satisfy the legal definition of "manufacturing establishment," you must pay employees who are engaged in manufacturing activities (also specifically defined by law) overtime for all hours over 10 in a work day. These employees are also subject to a daily hours

maximum; they may not work more than 13 hours in a work day. “Work days” are defined in the law as recurring 24 hours periods designated by the employer.

“Manufacturing,” in the context used in the special overtime rules, means: the process of making goods or any material produced by machinery; anything made from raw materials by machinery; and the production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, by the use of machinery.

“Manufacturing establishment” means any place where machinery is used for manufacturing purposes. “Machinery” means power driven machinery by electricity, nuclear and fossil fuels, hydroelectric, geothermal, or some power source other than by human hand, foot, breath or otherwise.

You described your cider production process as partially mechanized, which means your operations probably satisfy this definition.

As for the employees who are not involved in the manufacturing process, such as the individuals whose duties you describe as processing orders and preparing the product for shipping, the rule is that these non-manufacturing employees are not subject to the special manufacturing overtime rules and maximum hours limitations because they are not “employed in” the manufacturing process. This is true as long as a physical barrier separates them from the manufacturing plant.

In addition to the daily overtime rule, the general overtime rule - that employers pay overtime for hours over 40 in a workweek - still applies to manufacturing employees. This means that employers must calculate both daily and weekly overtime totals and pay the higher of the two amounts.

There is an important exception to the overtime and maximum hours requirements discussed above that applies when an employer and employees of manufacturing establishment have a collective bargaining agreement. Next week, we will cover that and other significant legal exceptions applicable when a collective bargaining agreement exists.

For more information on this and other important issues affecting Oregon employers, please visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.