



National Restaurant Association: FLSA Compliance

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Today's Agenda

- 01** Overview of Program
- 02** Status of Regulations
- 03** Hot Issues Related to Exempt Status
- 04** Issues Surrounding Work Hours
- 05** Methods of Pay/Calculating OT Rate
- 06** Questions and Answers



So What's Changing on December 1?

Old Rule

vs.

New Rule

- Exempt executive, administrative, and professional employees can earn a salary of **\$23,660**
- Exempt “highly compensated” employees can earn a total of **\$100,000** per year
- These salary levels remained in place for over a decade, until being **affirmatively updated** by the DOL

- Exempt **executive, administrative, and professional employees** must earn a salary of at least **\$47,476**
- Exempt “**highly compensated**” employees must earn at least **\$134,004**
- These levels are set **automatically increase** for inflation **every three years**, starting in January 2020
- The DOL estimates the change will extend overtime to **4.2 million workers**

Status of Rule

- Legislative Activity
- Pending Litigation
- Impact of Election

Hot Topics for Exempt Employees

- Part-Time Employees
- Split Classifications within Positions
- 10% Rule for Commission Payments

10% Rule for Commissions

- May satisfy up to 10% of salary requirement (\$91.30 per week) with nondiscretionary bonuses, incentives, and commissions (at least quarterly).
- Each pay period employer must pay at least 90% (\$821.70 per week) of salary required.
- If, at end of quarter, total salary plus incentives are less than \$11,869.00 (\$913 x 13), must make up difference within one pay period.

Issues Related to Work Hours

- Waiting Time
- Rest and Meal Periods
- Lectures, Meetings, and Training Programs
- Travel Time

Work not requested but “suffered or permitted” is work time.

- Employee may voluntarily continue to work at the end of the shift.
 - May desire to *finish an assigned task* or may wish to *correct errors, or prepare time reports* or other records.
 - The reason is **immaterial**.
 - If the employer **knows** or has **reason to believe** that the employee is continuing to work, the time is **working time**.
 - **Duty of management** to exercise its control and see that the work is not performed if it does not want it to be performed.

Determining Compensability of On-Call Time

- An employee who is required to remain on call on the employer's premises is working while "on call."
- An employee who is required to remain on call at home, or who is allowed to simply leave a message where he/she can be reached, is (in many cases) not working while on call.
 - Additional constraints on the employee's freedom could require the time to be compensated.
 - How often?
 - How long?
 - Response time
 - Ability to trade on-call duties

Meal and Rest Periods

- Federal Law:
 - Rest periods of short duration, usually **20 minutes or less**, must be counted as hours worked.
 - Bona fide meal periods (**typically 30 minutes or more**) generally need not be compensated as work time.
 - The employee must be completely relieved from duty for the purpose of eating regular meals.
 - The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.
 - What happens in the middle?

Lectures, Meetings, and Training Time

- Attendance at lectures, meetings, training programs and similar activities need not be counted as working hours if:
 - Attendance is outside of the employee's regular working hours
 - Attendance is in fact voluntary
 - The course, lecture, or meeting is not directly related to the employee's job
 - The employee does not perform any productive work during such attendance

Travel Time

- The principles which apply in determining whether time spent in travel is compensable time depends upon the kind of travel involved.
 - Home to Work Travel
 - Home to Work on a Special One Day Assignment in Another City
 - Travel That is All in a Day's Work
 - Travel Away from Home Community

Determining Compensability of Travel Time

- **Home to work:** Travels from home before regular workday and returns home at the end of the workday. Normal incident of employment. True whether works at a fixed location or at different job sites. Normal travel from home to work is **not** worktime.
- **Special one-day out-of-town assignment:** Travel not regarded as ordinary home-to-work travel.
 - Travel between home and departure point may be deducted.
 - Usual meal time deductible (if meets standards).

Determining Compensability of Travel Time II

- **All in a day's work:** Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked.
- **Travel away from the home community (overnight):** Travel away from home is work time when it cuts across the employee's workday.
 - The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days

Methods of Pay/Calculating the OT Rate

- Variety of Pay Methods
- Calculating OT Rate
- Math Section

Pay Methods

- Hourly Rate of Pay
- Hourly Rate Alternatives
 - Piece rate
 - “Commission Only” with minimum wage guarantee
 - Salary for fixed hours
 - Salary for fluctuating hours
- Combination of Methods

Overtime Pay

Under the FLSA, non-exempt employees must be paid 1.5 times the “regular rate of pay” for all hours worked in excess of 40 hours in a workweek.

The Regular Rate of Pay

- All remuneration for employment paid to, or on behalf of, the employee (less certain specified exclusions)

DIVIDED BY

- All hours worked

Exclusions from the Regular Rate

- Sums paid as gifts, the amounts of which are not measured by or dependent upon hours worked, production, or efficiency
- Vacation, holiday, sick pay
- Reimbursement for business expenses
- Payments **not** for hours worked
- Discretionary bonuses
- Payments made pursuant to bona fide profit-sharing plan
- Talent fees

Exclusions from the Regular Rate II

- Contributions made irrevocably to retirement, health, life insurance plans
- Extra pay at premium rate for daily (8 + hours) OT
- Extra pay at premium rate for weekly (40 + hours) OT
- Extra pay for Saturday, Sunday, holiday, 6th or 7th day work
 - must be 1.5 times rate
- Extra pay for work outside normal workday or workweek
 - must be 1.5 times rate
- Value/income from stock option or bona fide stock purchase plans

Extra Payments

Marshall works as a inside sales employee earning \$10.00/hour. He works 50 hours in a week and also earns \$250 in commissions. What is his overtime rate of pay?

- A. \$15.00
- B. \$22.50
- C. \$25.00

RROP for Non-Exempt Employees

- $\$10 \times 50 = \500.00
- $\$500 + \$250 = \$750.00$
- $\$750.00/50 = \15.00
- $\$15.00 \times 1.5 = \22.50
- Total Comp = $\$600 (\$15 \times 40) + \$225 (\$22.50 \times 10) = \$8.25$

OR

- $\$750/50 = \15.00
- $\$15.00/2 = \7.50
- Total Comp = $\$500 (\text{S/T}) + \$250 (\text{COMM}) + \$75 (\text{OT}) = \825

Non-discretionary Bonuses

- Must be attributed to workweek(s) for which it is earned.
- Assume Ted's \$500 bonus covered 4 weeks. Also assume Ted worked 45, 38, 42, and 37 hours in each of the 4 weeks.
- \$125 ($\$500/4$) would be treated as earned in each week.
- In the weeks in which Ted worked 38 and 37 hours, no additional payments due.
- In the weeks in which Ted worked 45 and 42 hours, additional OT payments due. [$(\$125/\text{hours worked}/2) \times \text{OT hours}$]

THANK YOU!

QUESTIONS?



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