**FLSA: Overtime and Exempt/Non-exempt Status**

**FLSA Status/Overtime and Youth Rules**

**The FLSA has an excellent website in addition to the resources offered by Catapult:**[**http://www.dol.gov/whd/.**](http://www.dol.gov/whd/)

**1. What is the Fair Labor Standards Act?** The Fair Labor Standards Act (FLSA) is legislation that covers: minimum wage, overtime pay, exempt and non-exempt status, recordkeeping, and youth employment standards in the private sector.

**2. What is federal minimum wage?** Currently, federal minimum wage is $7.25 per hour. Some states have higher minimum wage requirements, and in those instances the higher wage prevails. Some exceptions apply pertaining to youth under 20 years of age (see below). The minimum wage in NC is $7.25 per hour.

**3. What do I need to know about employing youth?** Unless prohibited by state or local law, the FLSA contains a provision that permits employers to pay youth under 20 years of age a rate of $4.25 per hour for up to 90 consecutive calendar days. After 90 calendar days, the employee must be paid the regular minimum wage rate of $7.25 per hour. A break in service does not affect the 90 calendar days; as such, the employer may only use the lower rate of pay once. More information can be found in the US DOL Wage & Hour Division Fact Sheet #32 <https://www.dol.gov/whd/regs/compliance/whdfs32.htm>

**4. Who is exempt from overtime pay?**

* Positions classified as exempt are exempt from the minimum wage and overtime provisions of the FLSA. Positions eligible for exemption are: executive, administrative, professional, some computer employees and outside sales employees. To qualify for exemption, employees must meet a duties test for each exemption – job titles vary and should not be the sole factor in determination. (See the US DOL Wage & Hour Division’s website for fact sheets on each exemption). A summary is here: <https://www.dol.gov/whd/overtime/fs17a_overview.pdf>
* In addition to the duties test, an exempt employee must earn a minimum amount ($684 per week as of January 1, 2020 – Previously, $455 per week). As of 1/1/2020, 10% of the total amount can be incentive pay, commission, and non-discretionary bonuses.  If calculating using bonuses and the minimum pay is not met within a 52-week period, there must be a make-up payment by the next period (which may not be counted towards the next 52 week period). Otherwise, the employee would be entitled to overtime pay for any overtime hours worked in the previous 52-week period. (Outside salespeople and certain other positions, such as certain teachers, lawyers and physicians do not have a set minimum pay.)
  + Non-discretionary bonuses are bonuses based on a pre-determined criteria which employees expect to earn if they meet those criteria (examples: attendance or productivity bonuses) and may be counted in compensation for exempt classification.
  + Discretionary bonuses are not expected (timing unknown), do not incent employees’ work by being known in advance, and are at the sole discretion of the employer.
* A final exemption exists for certain highly compensated individuals who perform any one or more of the exempt duties.  As of 1/1/2020 the highly compensated threshold is $107, 432 (a portion of which may be met by incentive pay, commissions and non-discretionary bonuses)
* With a few exceptions, exempt employees must receive the full salary for any week during which the employee performs any work, regardless of the number of days or hours actually worked.

**5. Who is not exempt from overtime pay?**

* Employees who meet all the qualifications for exempt status (above) may be paid overtime as an exempt, but employees who do not meet those exemption qualifications must ALWAYS receive overtime pay.
* Non-exempt employees who work more than 40 hours in a single workweek are eligible for overtime pay. Most often overtime is paid at a rate of 1.5 times the employee’s regular hourly rate. Some exceptions apply.
* Further, some states have overtime laws.  When an employee is subject to both the state and federal overtime laws, the employee is entitled to overtime according to the higher standard.
* Catapult provides a state-by-state review of state laws on the Members Only section of our website.

**6. Can my employee waive overtime pay?** No – overtime may not be waived if it is required by law.

**7. What if my employee works overtime without authorization?** The employee must be paid for any work performed over 40 hours in a single workweek. However, disciplinary action may be permitted dependent upon your organization’s policies and procedures.

**8. What is a workweek?** A workweek is seven consecutive 24-hour periods. This means your organization’s workweek might be Monday through Sunday, Sunday through Saturday, or any other combination. The workweek may start and end at any hour but must be consistent and not fluctuate each week.

**9. How do I calculate overtime pay?** Overtime is calculated by determining the regular rate of pay, the overtime premium pay and determining how bonuses should be handled. The regular pay rate cannot be less than minimum wage.

*Example:*An employee works 45 hours in a workweek and earns $10.00 per hour. What is his overtime pay? What is his total pay?

Step 1:  Calculate straight-time earnings (45 hours \* $10.00 = $450).

Step 2: Calculate the regular rate of pay ($450 ÷ 45 hours = $10.00 / hr.).

Step 3: Calculate the OT premium pay ($10.00 \* 5 OT hours \* .5 the rate of regular pay = $25.00

Step 4: Add straight-time earnings to the additional half-time pay ($450 + $25 = $475).

**10. What types of pay are included in overtime pay calculations?** All hours worked must be considered. Non-discretionary bonuses must be included in overtime pay calculations. Non-discretionary bonuses are almost always formula driven. Examples of non-discretionary bonuses are a production bonus or an attendance bonus.

*Example:*An employee works 45 hours in a workweek and earns $10.00 per hour. He receives a production bonus of $25.00. What is his overtime pay? What is his total pay?

Step 1: Calculate straight-time earnings (45 hours \* 10.00 = $450 + $25.00 bonus = $475.00).

Step 2: Calculate the regular rate of pay ($475.00 ÷ 45 = $10.56 / hour).

Step 3: Calculate the overtime premium pay ($10.56 \* 5 \* .5 = $26.40).

Step 4: Add straight-time earnings to the additional half-time pay ($475.00 + $26.40 = $501.40).

**11. What types of pay are NOT included in overtime pay calculations?** Few if any discretionary bonuses need to be included in overtime pay calculations. Examples of discretionary bonuses include holiday bonuses, or other “gifts” from the employer.

**12. What if my employee earns two rates of pay? How do I calculate overtime?** You will use a weighted average to determine the overtime calculation.  (See example below.)

*Example:*An employee works 50 hours total in a workweek.  20 of the hours are at a $10.00 pay rate; the other 30 hours are at an $12.00 pay rate.

Step 1: Calculate straight-time earnings for each pay rate:

20 hours \* $10.00 = $200

30 hours \* $12.00 = $360.00

Total = $560.00

Step 2: Divide the Total Amount by the Number of Hours ($560.00 ÷ 50 = $11.01/ hour)

Step 3: Calculate the overtime premium pay ($11.01 \* 1.5 = $16.52) and multiply by the number of overtime hours.

**13. Can I pay employees with “comp time” (compensatory time) instead of overtime?**No. Employees who work more than 40 hours in a single workweek must be compensated with overtime pay, even if they would prefer the time off. It is illegal to grant time off in lieu of overtime pay. Some exceptions apply to state and local government employees. Balancing time off within the same work week is a lawful way to avoid overtime costs.

**14. Do I pay overtime if my employee worked 80 hrs. in a 2 wk. pay period (one week he worked 45)?** Yes, overtime pay is required for all hours worked over 40 in a single workweek. The employee would be eligible for overtime pay on the 5 hours he worked over 40 in the first week. There are limited options to provide time off in the same pay period, on which Catapult can provide more detail if required.

**15. What kinds of resources are available?**

* Catapult welcomes any opportunity to assist you with your overtime questions, calculations and policies.
* The Fair Labor Standards Act is the law that regulates overtime. You can learn more about overtime at the Department of Labor’s web site: <http://www.dol.gov/whd/flsa/index.htm>
* The Department of Labor has an overtime calculator for employers and employees. To use the calculator, go to:[http://www.dol.gov/elaws/esa/flsa/otcalc/i3.asp.](http://www.dol.gov/elaws/esa/flsa/otcalc/i3.asp)