

United States Department of Labor
Wage and Hour Division
Wage and Hour Division (WHD)

Overtime Pay



Overview

The federal overtime provisions are contained in the Fair Labor Standards Act (FLSA). Unless exempt, employees covered by the Act must receive overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, unless overtime is worked on such days.

The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

On May 23, 2016 the Department of Labor published a final rule updating the overtime regulations. For more information, please visit www.dol.gov/whd/overtime/final2016.

On July 26, 2017 the Department of Labor published a Request for Information (RFI), Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees. For more information, please visit <http://www.dol.gov/whd/overtime/rfi2016.htm>



General Guidance

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Guidance materials about overtime topics, including an Employment Law Guide, Qs & As, guide to overtime laws in the states, and more.

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Fact Sheets

Fact Sheets

Learn more by reading fact sheets that cover a variety of overtime topics.

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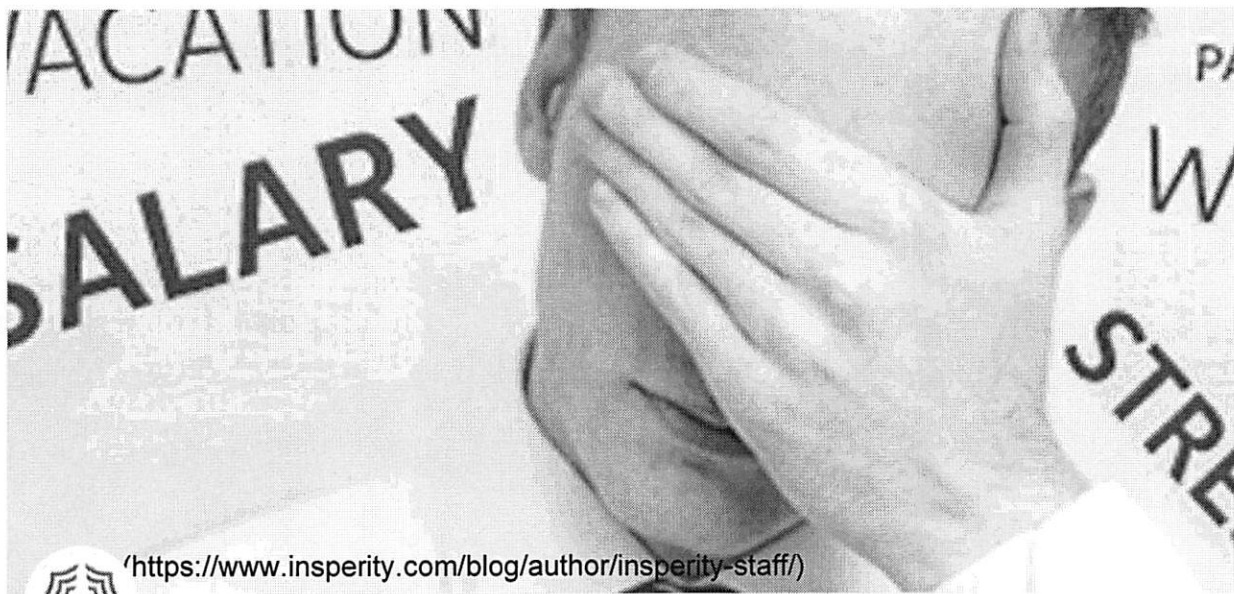
E-Tools

E-tools

Access a collection of interactive online tools and presentations that address overtime pay requirements.

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Comp Time Vs. Overtime: Which Should You Offer Employees?

On May 8, 2013, the U.S. House approved a bill that would allow private-sector employees to take compensatory or comp time instead of overtime pay when they work more than 40 hours a week. Though the bill is said to have little chance of passing in the Senate, it has raised questions about the legalities and merits of offering comp, or compensatory time, in lieu of overtime pay.

For now, employers must comply with the rules as they are laid out by the Fair Labor Standards Act (FLSA). If you're not sure what those rules comprise, here are some guidelines.

Non-exempt employees must be paid overtime.

Rules for overtime pay depend on whether employees are federally classified as exempt or non-exempt employees.

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According to the FLSA, an employer is required to pay non-exempt employees one and a half times their regular rate of pay (<https://www.insperity.com>) a single work week. An employer cannot and should not pay comp time in lieu of overtime pay (<https://www.insperity.com/blog/outside-unplanned-and-costly-employee-overtime/>) even if the employee requests it.

So, for example, if Pam – a non-exempt employee who makes \$20 an hour – works 42 hours, her gross pay for that week would be \$860 (\$800 for her regular 40 hours at \$20 an hour and \$60 for the two extra hours she put in at \$30 an hour.)

Don't forget to check your state laws, too.

While FLSA covers the federal law, your state may have additional regulations. For example, in California, overtime is required when employees work more than 8 hours in a day, not more than 40 hours in a week.

Non-exempt is not the same as "hourly".

There is a misconception that employees that are paid by the hour are the same as non-exempt employees. Using the same logic, some people think salaried employees are automatically considered non-exempt, but neither of those beliefs is necessarily true.

Exempt and non-exempt employees are determined by how their job functions are classified, not how they're paid. A salaried employee can be eligible for overtime and protected by FLSA, if his or her job is also classified (<https://www.insperity.com/blog/5-common-mistakes-when-classifying-workers/>) as non-exempt.

If you offer comp time at all, offer it sparingly.

Though comp time can be popular with employees, it may not be the **best reward** (<https://www.insperity.com/blog/52-epic-ways-to-reward-your-employees/>) for you to offer. Not only is it illegal to offer to non-exempt employees in exchange for overtime pay, but it can cause problems even when offered to exempt employees. For example:

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If comp time is offered regularly, employees may come to expect it every time they work overtime.

It can lead to wage and hour claims and disputes over whether employees are truly exempt or non-exempt.

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