

Employment Law Newsletter

Legal news promoting employee rights

HOW TO CALCULATE OVERTIME

By Morris Nazarian

Assuming that an employee is not "exempt" from overtime, calculating overtime is based on the employee's regular rate of pay.

Hourly: For hourly paid employees, which under most instances are non exempt (meaning are entitled to overtime) the regular rate of pay is the hourly rate. Hourly employees must be paid one and a half times (1.5) their regular rate of pay for all hours worked over eight (8) in a day and/ or over forty (40) hours in a week. For all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek, the employee must receive double their regular rate or pay.

Salary: First of all, there is a big misconception is that a salaried employee is never entitled to overtime. This is simply not true. If you are paid a salary and do not satisfy all of the requirements of the exemption, you are entitled to overtime. In this case, the regular rate is determined as follows:

1. Multiply the monthly remuneration by 12 (months) to get the annual salary.
2. Divide the annual salary by 52 (weeks) to get the weekly salary.
3. Divide the weekly salary by the number of legal maximum regular hours (40) to get the regular hourly rate.

If the employee, however, is paid a salary and does not work at least 40 hours per week, the overtime rate can be calculated by using two methods. Method 1- To calculate the employee's regular rate of pay you divide the weekly salary by 40 hours and multiply this amount to the number of straight time hours worked. To calculate overtime under Method 1, multiply this regular rate of pay times 1.5 and then multiply this amount times the number of overtime hours.

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Method 2- To calculate the regular rate of pay you divide the weekly salary by the total number of hours worked in that week and multiply this amount to the number of straight time hours worked. To calculate overtime under Method 2, multiply this regular rate of pay times 1.5 and then multiply this amount times the number of overtime hours.

Piece or Commission- For commissioned employees, the regular rate is determined by dividing the total amount of compensation earned in the workweek by the total number of hours worked. The resulting figure is the regular rate for that week.

The regular rate is then multiplied by 0.5, which will give you the "half-time rate." Multiply the half-time rate by the number of hours over 40, and you have correctly calculated the overtime for the week. Now just add the overtime to the already-earned commission, and that is the total compensation due to the employee for that workweek.

Let's say an employee earns a commission of \$1,100 in a workweek. In the same workweek, that employee worked 44 hours, so the employee is entitled to four hours of overtime. Here is how you would calculate overtime for that employee:

\$1,100 commission (total compensation for the workweek)

divided by 44 (total number of hours worked)

equals \$25.00 (now you have the regular rate for that workweek)

Multiply \$25.00 by 0.5 (or divide it by 2). This computes to a half-time rate of \$12.50.

Multiply \$12.50 by the number of overtime hours worked (in this case, four hours). This amounts to \$50.00.

Now you simply add that \$50.00 to the \$1,100.00 the employee already earned for the workweek, arriving at a total of \$1,150.00.

Why should you use .5 (half-time) instead of 1.5 (time-and-a-half)? The employee already has been paid a commission amount, which represents straight time for all hours worked, so only an additional "half-time" is due for the overtime hours.

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Caveat 1: As employers apply these formulas, it is important to keep in mind that the regular rate may not be less than the minimum wage.

Caveat 2: If you are paid **two or more rates** by the same employer during the workweek, the regular rate is the "weighted average" which is determined by dividing your total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including the overtime hours. For example, if you work 32 hours at \$9.00 an hour and 10 hours during the same workweek at \$7.00 an hour, your weighted average (and thus the regular rate for that workweek) is \$8.52. This is calculated by adding your \$358 straight time pay for the workweek ((32hours x \$9.00/hour) + (10 hours x \$7.00/hour) = \$358) and dividing it by the 42 hours you worked.

Caveat 3: Gifts for special occasions, expense reimbursements, payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, premium pay for Saturday, Sunday, or holiday work, and discretionary bonuses are payments that are excluded from the regular rate of pay.

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