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# Get the Overtime Pay Rules Right

By Dirk Bartram

I've discovered recently that a lot of closely-held businesses don't fully understand the overtime pay rules. It's important to get the overtime rules right. Employer miscues can result in the overpayment of employees on the one hand, and enforcement actions against the employer on the other.

## How Many Hours Will Trigger Overtime?

A surprising number of businesses give the wrong answer to this question. In Washington, overtime is not triggered by the employee working longer than an eight-hour day. Rather, overtime is required when the nonexempt employee works more than 40 hours during the workweek. If the employee works 3 twelve-hour days and 1 four-hour day during the workweek, no overtime is due.

A "workweek" is a seven-day period of time that begins on the same day every week. It must be established by the business as the basis for paying its workers. When paying overtime, a business must pay at least one and one-half times the worker's regular hourly rate.

The law does not require the employer to pay overtime just because the employee works on a holiday. Also, your business must pay overtime during a holiday week only if the employee actually worked more than 40 hours in the same week. If the total number of hours in the workweek is 48 hours, including 8 hours for a paid holiday that the employee did not work, your business is not required to pay overtime.

Different rules apply to construction and maintenance contractors who pay their employees for work on projects paid by public funds. Check with the Washington Department of Labor and Industries for these rules. Its Web site is <http://www.lni.wa.gov/>.

## Differences Between Federal and State Rules

Employers must comply with both federal and state overtime rules. New federal regulations took effect on August 23, 2004. Where differences exist between Washington State and new federal overtime rules, the business must follow the rule that is most favorable to the worker. Thus if prior to adoption of the new federal rules your business was required to pay overtime to an employee, in most cases your business must still pay the employee overtime. If prior to the adoption your business was not required to pay overtime to a salaried employee, and that employee earns less than \$455 per week, your business might be required to pay overtime. Check with the U.S. Department of Labor. Its website is <http://www.dol.gov/>.

## No Waivers and No Comp Time

Workers cannot waive their right to overtime pay. Businesses are required to pay nonexempt employees one-and-one-half times the regular rate for hours worked over 40 per week, even if the employee requests to work overtime hours without overtime pay.

Washington rules permit an overtime exemption for employees who request compensatory time off in lieu of overtime pay. However, the Federal Labor Standards Act (FLSA) allows comp time in lieu of overtime pay only if the employee works for a public sector employer. Thus private sector employers who are subject to the FLSA cannot use comp time in lieu of overtime pay. This would include the vast majority of closely-held businesses.

### **Mandatory Overtime; Double Time Not Required**

Under Washington law, a business can generally require its employees to work overtime, even on a day that is normally a day off. Washington law does restrict health-care facilities from requiring registered nurses and licensed practical nurses to work overtime in excess of the established schedules or agreed upon work weeks. Limits also apply to teen workers.

Generally, you are not required to pay double time under Washington law. However, double time pay could be potentially required on a public works project that is paid according to the prevailing wage.

Much of this information in this article and more can be found at the Washington Department of Labor and Industries Web site at <http://www.lni.wa.gov/>.

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