Overview

This overtime calculation tool provides a good overview of two common overtime miscalculation scenarios. Use these examples, if they apply, for existing employees or to forecast overtime calculations due to reclassification activities. Accurate overtime calculations for all employees is necessary to comply with FLSA.

Calculating overtime for Non-Exempt employees that receive commissions, non-discretionary bonuses, or other pay

The FLSA requires that overtime is calculated weekly based on the employee's "regular rate of pay". However, although they may not seem "regular", commissions, non-discretionary bonuses and other non-hourly pay must be included in the "regular rate of pay" calculation.

For weeks in which a non-exempt employee earns both overtime and incentive pay – whether provided at the time or retroactively – the company must calculate (or recalculate) the employee's regular rate of pay so that it includes both their base pay and incentive pay for the week, then use the new amount for overtime calculations.

Here's an example of this overtime calculation, courtesy of the Department of Labor: An employee paid biweekly at a rate of $12 per hour plus a $100 attendance bonus, working a schedule of 56 hours per week as shown in the chart below, would be due overtime pay as follows:

WEEK 1	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Hours Worked	8	8	8	8	8	8	8
WEEK 2	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Hours Worked	8	8	8	8	8	8	8

$100 (bi-weekly attendance bonus) ÷ 2	= $50 (weekly bonus equivalent)
56 hours worked x $12/hour + $50 (weekly bonus equivalent)	= $722 (total straight compensation)
$722 (total straight time compensation) ÷ 56 hours worked	= $12.89 (regular rate)
$12.89 (regular rate) x ½	= $6.45 (half-time premium)
$12.89 (regular rate) + $6.45 (half-time premium)	= $19.34 (overtime rate)
40 (straight time hours) x $12.89 (regular rate)	= $515.60 (straight time earnings)
16 (overtime hours) x $19.34 (overtime rate)	= $309.44 (overtime earnings)
Total earnings for week one	$825.04
Total earnings for week two	$825.04
Total earnings for bi-weekly period	$1,650.08

DEFINITIONS

What is a non-discretionary bonus? The FLSA defines non-discretionary bonuses as those that are announced to employees to encourage them to work more steadily, rapidly, or efficiently, and bonuses designed to encourage employees to remain with an organization. If there is established criteria an employee has to meet, and the bonus is guaranteed to be earned once those criteria are met, that will be considered a non-discretionary bonus.

What is a discretionary bonus? A discretionary bonus is something an employer has not obligated itself to provide and can give to any employee, at any time, for any reason or no reason at all. It is not guaranteed or used to incentivize employees. Holiday bonuses, as well as payments made pursuant to a bona fide profit sharing plan, trust, thrift, or savings plan, will also be considered discretionary in that they do not need to be considered when calculating base or overtime pay, so long as they are not based on hours of work, production, or efficiency. Not many bonuses qualify as discretionary under the FLSA, although those that do qualify can be excluded from the regular rate of pay and overtime calculations

CALCULATING SEMI-MONTHLY OVERTIME

A semi-monthly pay method occurs when employees receive paychecks on two designated dates per month. For example, pay dates designated as the 15th and the end of the month are semi-monthly. This is contrasted with weekly or bi-weekly pay in which paychecks are distributed every week or every other week. Both weekly and bi-weekly pay methods have a set number of days per pay period – either 7 or 14 days.

VARYING NUMBER OF DAYS IN PAY PERIOD

The nature of semi-monthly pay is that the number of days in each pay period varies. For example, there may be 15 days in the first pay period of the month and 14, 15, or 16 in the second, depending on the month

PARTIAL WORKWEEKS IN THE EQUATION

Per the federal Fair Labor Standards Act (FLSA), unless specifically exempt, employees must receive overtime pay for hours worked in excess of 40 in a workweek at a rate of not less than time and one-half their regular rate of pay. Most states adhere to the FLSA's overtime rules, but some states have more strict requirements, such as California, Alaska, Colorado, Florida, Nevada, Rhode Island and Massachusetts. Overtime laws for each state can be found in the State Laws section of the HR Support Center under the Laws tab.

A company may define their consecutive 7-day workweek however it wishes so long as it is pre-determined and is not altered or adjusted to avoid overtime. For example, the workweek could be Monday through Sunday, Thursday through Wednesday, or any other 7-day stretch the company chooses.

As previously mentioned, a semi-monthly pay period usually includes 14, 15, or 16 days. However, the company must still calculate overtime according to the company's workweek. If the pay period includes half of a workweek, this can't be counted as a full week. Essentially, you can't ignore the other half of the workweek when calculating overtime even though it was paid in a separate pay period.

HOW TO CALCULATE SEMI-MONTHLY OVERTIME

For the purpose of this example, the pay period begins on the 1st of the month (Tuesday) and ends on the 15th of the month (Tuesday) for a 15-day pay period. The company's workweek is Sunday through Saturday and the pay period is separated by workweek below.

Work week #1	Day	Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Total hours for 7-day workweek	Total hours of workweek paid in a previous pay period	Total hours of workweek payable in current pay period
	Date	2/28	2/29	3/1	3/2	3/3	3/4	3/5			
	Hours	2	8	8	8	8	8	0	42	10 regular	30 regular, 2 overtime

Work week #2	Day	Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Total hours for 7-day workweek	Total hours of workweek paid in a previous pay period	Total hours of workweek payable in current pay period
	Date	3/6	3/7	3/8	3/9	3/10	3/11	3/12			
	Hours	2	8	8	8	8	8	0	42	0	40 regular, 2 overtime

Work week #3	Day	Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Total hours for 7-day workweek	Total hours of workweek paid in a previous pay period	Total hours of workweek payable in current pay period
	Date	3/13	3/14	3/15	3/16	3/17	3/18	3/19			
	Hours	2	8	8	?	?	?	?	18	0	18 regular

Dates within the example pay period of 3/1 – 3/15 (15 days)

Step 1
Separate the payroll period into the Company's workweeks. In this example, there are parts of three workweeks in the example pay period:
- **Workweek #1:** 2/28/16 – 3/5/16 (partial week in this pay period, only the 1
- **Workweek #2:** 3/6/16 – 3/12/16
- **Workweek #3:** 3/13/16 – 3/19/16 (partial week in this pay period, only the 13

Step 2

Total the hours worked for the first entire workweek in the pay period. In this example, hours worked on 2/28 – 2/29 need to be included in the "total hours worked" calculation to assess for overtime even though the hours were already paid in a separate pay period. Once the total number of hours worked in the workweek is obtained, subtract the hours that were already paid in a previous pay period as follows:

- **Workweek #1:** 2/28 – 3/5 = 42 hours worked (2 hours overtime)
- **Hours paid in a previous pay period** (2/28 – 2/29) = 10 regular hours
- **Hours paid in this pay period = 30 regular hours + 2 overtime hours**

Keep in mind that we do not need to issue regular hours pay for work on 2/28 – 2/29 again, as these hours were paid in a separate pay period. However, now that we know the total hours worked for this full workweek, we must assess any overtime due in the current pay period.

Step 3

Total the hours worked in the second workweek in the pay period – all of which fall into one pay period.
Workweek #2: his pay period = 40 regular hours + 2 overtime hours

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Step 4

Total the hours worked in the third workweek in this pay period.

- **Workweek #3:** 3/13 – 3/19 = 18 hours worked
- **Hours paid in this pay period = 18 regular**

Note: if this employee works between Wednesday, 3/16 and Saturday, 3/19 – dates that are in the next pay period – those hours must be assessed with workweek #3 when running the next payroll for any overtime incurred, just as in Step #2 above.

Step 5

Total the hours worked in each workweek for the pay period.

Workweek #1 = 30 regular + 2 overtime

Workweek #2 = 40 regular + 2 overtime

Workweek #3 = 18 regular

Total pay due in this pay period: 88 regular + 4 overtime

SUMMARY

For the purpose of calculating overtime, each full workweek must be examined in isolation – regardless of whether the workweek falls into one pay period or is split between two. Use the steps above to assess overtime due for each workweek for compliance with the FLSA.