



CLIENT INFORMATION GUIDE

Section: Employment Practices

Topic: Overtime

Is an Employee Entitled to Overtime?

An employee is classified as either “exempt” or “non-exempt”, meaning that either they are exempted or not exempted from applicable federal and state wage and hour laws, as defined by the federal Fair Labor Standards Act (FLSA) of 1938. This distinction is based upon several tests, and not just based upon whether an employee is salaried. To make certain that you have properly classified your employees, you are encouraged to read the Client Information Guide, “Employee Classifications” found in the Human Resources section. If an employee’s status is exempt, overtime pay is not required.

Overtime Pay

Non-exempt employees must normally be paid one-and-one-half times their regular rate of pay after they have worked 40 hours in a workweek. However, some states have established more stringent overtime pay rules and you should be aware if you are affected by those rules. But, unless required by such state law, employers are not required to pay overtime pay until the employee has worked 40 hours in a workweek, even if they work beyond their normally-scheduled hours on any given day. Additionally, union employees may be regulated by different overtime rules if these rules are outlined in the terms of their collective bargaining agreement.

How Do You Calculate Overtime?

Paid Time Off

Paid time off for vacation, sick time, holidays or personal leave does not count as hours worked for purposes of calculating overtime. For example, if an employee works 40 hours in a workweek, and is also paid for eight hours of holiday pay, that employee would be paid for 48 hours at his or her regular rate.

Weekend Hours.

Overtime is not required to be paid for hours worked on a Saturday or Sunday, unless this is required by state law or under a union’s collective bargaining agreement.

Unauthorized Overtime

The law assumes that an employer is aware, or has a duty to be aware, of the hours that their employees are working. Consequently, an employer should not refuse to pay overtime if an employee has worked overtime and that is verified by the payroll records, even if the overtime was not authorized.

However, an employer may establish a written policy that all employees are required to obtain prior approval before working overtime. If an employee works unauthorized overtime, the employee should be reminded of the company’s overtime policy and then, if unauthorized overtime hours are worked, the employee may be disciplined. (See the Guide entitled, “Corrective Action” in the Employment Practices section of this guide.)



Requiring Overtime Work

The law allows for an employer to schedule overtime for workers, but – practically speaking – doing so may have a negative impact upon employee morale if employees feel they have no choice in whether or not they wish to work overtime. It is a wise general practice to allow employees eager to work overtime to volunteer for the overtime, while exempting those who do not wish to work overtime, except for under extraordinary circumstances.

If overtime is to be a regular requirement of a position, it is best that this is noted during the hiring process so that employees who do not wish to work overtime may have opportunity to seek work elsewhere.

Compensatory Time in Lieu of Overtime

Compensatory time is the practice of granting hour-for-hour time off in exchange for overtime hours worked. Compensatory time is forbidden under the FLSA. Generally, the only way such a practice is lawful is if the compensatory time is offered within the same workweek in which the overtime hours were worked.

If you need further clarification on the laws regarding overtime, you are encouraged to speak with your Choice customer service specialist.