

Overtime Pay

Quick Notes...

Overtime wages must be paid after a 40 hour workweek or a 12 hour workday, whichever yields the highest pay amount (*for most occupations*).

Overtime pay shall be a minimum of 1.5 times the regular rate of pay (regular pay must be at least equal to the minimum wage).

Agricultural employees are exempt from the overtime pay provisions. This exemption should be used only for those workers engaged directly in farm production activities.

Given seasonality, ag employees do not have to be paid overtime pay for hours worked in excess of 40 per week.

than twelve consecutive hours in a normal workday or more than forty hours in a workweek, whichever calculation yields the highest total pay for the pay period. The minimum wage to be paid must be no less than 1.5 times the regular rate of pay and the regular rate must be equal to or greater than the minimum wage.

An employer may not average two or more consecutive weeks of work time in order to lessen the amount of overtime to be paid. If an employee performs work in two or more positions at different pay rates for the same employer the wage shall be computed at the overtime rate based on the regular rate of pay for the position in which the overtime occurs, or at a weighted average of the rates for each position if overtime was incurred in both positions.

Salespersons, parts personnel, and mechanics in the automobile, farm vehicle, aircraft, and recreational vehicle industries are exempt from the overtime laws. Additionally some commissioned sales personnel, ski industry personnel, and medical transportation personnel are exempt from the regulations

Introduction

The Fair Labor Standards Act serves as the guideline for the individual state minimum wage and overtime laws. Colorado maintains the same standard as the federal government for overtime wages. The agricultural labor force has different standards for enforcement of overtime pay.

Non-agricultural Overtime Requirements

In most sectors of the economy, overtime pay begins when an employee has worked more

Agricultural Overtime Requirements

Employees who are employed in agriculture (as that term is defined in the Fair Labor Standards Act) are exempt from the overtime pay provisions. They do not have to be paid time and one half their regular rates of pay for hours

worked in excess of forty per week. However, it should be noted that agriculture does not include work performed on a farm that is not incidental to or in conjunction with the farmer's agricultural operation. It also does not include operations performed off a farm if performed by employees employed by someone other than the farmer whose agricultural products are the basis of the work. Any employee that falls under these two sets of circumstances must be paid for overtime when the conditions are met.

Use of the Agricultural Exemption

There has been a significant level of legal activity surrounding the debate of what is an appropriate use agriculture's exemption from this law. Given many employers' concerns about managing labor-related risk, it is important to understand if an operation's employees are truly exempt. A brief discussion of the exemption may be useful for employers who believe their employees are ineligible for overtime pay.

The Department of Labor's position on the agricultural exemption notes they should be applied in a limited scope to assure they remain plainly and unmistakably within their terms and spirit. It may be useful to give some background on why exemption for agriculture exists.

First, the extreme seasonality of many agricultural operations makes an exemption logical since weather, growing seasons and perishability of product makes it impossible for farm employers to avoid overtime during some weeks or months. Moreover, workers in

such markets usually welcome the overtime hours since they can rarely piece together a full 50-week work year. In short, the labor demand is compressed into a shorter time frame by factors out of the control of employer or workers.

Yet, livestock operations are still included in the exemption even though seasonality is far less prevalent for these firms. I assert that these operations are still served by such an exemption because of the fact that live animals require a variable level of care across days and weeks. For instance, milking cows is related to a biological function of milk production that the farm employer has only limited control over, thus, making it difficult to accurately plan the hours of work needed. In short, the economic rationalization for such an exemption is that labor demand cannot be predicted or managed due to the biological nature of agriculture, and thus, employers are exempted from a labor standard that would be costly to them.

In short, the employer should tie the need for overtime to this logic, and assume that any labor demand directly related to production tasks that vary with the season, emerging needs of crops or livestock, or that could not be spread across weeks due to the nature of the work (planting, harvest, breeding) is exempt. However, those tasks that are more similar to a typical small business (bookkeeping, routine maintenance of buildings and machinery, processing and marketing of products) are less likely to be exempt from the overtime pay provisions.

For more information on Overtime pay, please see the following web sites:

1. <http://www.dol.gov/dol/asp/public/programs/handbook/minwage.htm> - Overtime discussion from the Department of Labor's Small Business handbook
2. <http://www.dol.gov/dol/esa/public/regs/compliance/whd/whdfs23.htm> - Fair Labor Standards information
3. http://www.nolo.com/encyclopedia/articles/emp/ot_pay.html - A very comprehensive self-help legal site

Notes...

Network

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