

How Is Pay Figured When The Workweek Changes?

June 19, 2011

by John E. Thompson

Our last post raised questions about how to calculate a non-exempt employee's pay under the federal Fair Labor Standards Act for the timeframe during which the employer adopts a different workweek.

When the FLSA workweek is changed, the period in which the conversion occurs typically involves hours worked falling within, or overlapping, both the new and the old workweeks. As an enforcement policy, the U.S. Labor Department will deem FLSA wages to have been paid properly if the employer uses a particular computation method. This approach calls for an employer to:

- ◆ Assume that the overlapping hours were worked in only the "old" workweek, compute FLSA straight-time and overtime pay due for each of the workweeks, and then total the sums;
- ◆ Perform the same calculation assuming instead that the overlapping hours were worked in the "new" workweek; and
- ◆ Pay the employee the greater of the two totals.

See 29 C.F.R. § 778.301, 778.302.

For example, assume that an employer is changing its workweek from one beginning on Monday and running through Sunday to one spanning from Friday through Thursday. Assume also that an employee paid on an hourly basis at the rate of \$10.00 works the following hours during the period of the workweek change:

----- Old WW -----

M	T	W	Th	F	Sat	Sun	M	T	W	Th
8	8.25	10	9	7.5	8.5	9	1	8.25	8	8

----- New WW -----

This employee's wages would be computed as follows:

Pay for 60.25 "old" workweek's hours:

$[(40 \text{ hrs.} \times \$10.00) + (20.25 \text{ OT hrs.} \times 1.5 \times \$10.00)] = \$703.75$

Wage and Hour Laws

Pay for 25.25 "new" workweek's hours:

$$(\$10.00) \times (25.25 \text{ hrs.}) = \$252.50$$

TOTAL DUE FOR ELEVEN-DAY PERIOD: \$956.25

Pay for 50.25 "new" week's hours:

$$[(40 \text{ hrs.} \times \$10.00) + (10.25 \text{ OT hrs.} \times 1.5 \times \$10.00)] = \$553.75$$

Pay for 35.25 "old" week's hours:

$$(\$10.00) \times (35.25 \text{ hrs.}) = \$352.50$$

TOTAL DUE FOR ELEVEN-DAY PERIOD: \$906.25

Because the first computation produces the greater figure, that is, \$956.25, the employer would pay this amount.

Once again, this is something employers should also check into under any applicable laws of a state or other jurisdiction. For instance, some states might require a different approach or might prescribe a minimum period of advance notice before the new workweek may take effect.