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Use of the Fluctuating Work Week Method to Reduce Overtime Obligations

The GDHM Employment Alert for January addresses an alternate method for complying with overtime requirements under the Fair Labor Standards Act ("FLSA") that may not be widely known. This method, called the Fluctuating Work Week ("FWW") method is available to employers whose employees typically work differing numbers of hours each week. The FWW method, if properly applied, allows an employer to reduce its obligation for overtime wages under the FLSA.

Requirements For the Use of the FWW Method

An employer may use the FWW method to calculate overtime for a given employee if the following requirements are met:

(1) the employee's hours fluctuate from week to week;

(2) the employee receives a fixed salary no matter how many hours he works in a given week;

(3) the salary is sufficiently large so that when it is divided by the number of hours actually worked in a given week the resulting hourly rate meets or exceeds the minimum hourly wage rate under the FLSA;

(4) the employee clearly understands that the salary covers whatever number of hours he is called on to work in a given week.

How the FWW Method Works

If an employee's work hours typically fluctuate from week to week, and he is paid a salary that is expressly intended to cover all the hours actually worked in a given week, whether more than 40 or less than 40, the employee's overtime pay for a given week can be calculated differently from the standard calculation method in two important respects.

First, the overtime hourly rate for a particular week is calculated by dividing the employee's weekly salary by the number of hours actually worked that week. For example, if the employee is paid a weekly salary of $500, his hourly rate for a week he worked 50 hours would be $10. For a week in which he worked 45 hours his hourly rate would be $11.11 and for a week in which he worked 60 hours his hourly rate would be $8.33.

Second, to determine overtime pay for a given week, for each hour worked in excess of 40, the hourly rate is multiplied not by 1½ as in the standard method, but by ½ only. The rationale for this lower overtime multiplier is that the employee has already been paid for the total number of hours worked, so that overtime hours need be compensated only at ½ the hourly rate for the week.

Use of the FWW Method May Result in Substantial Reductions in an Employer's Overtime Obligation

The result of the use of the FWW method is to reduce the actual hourly rate (the more hours worked in a week the lower the hourly rate) and to reduce the overtime pay from 1½ times the hourly rate to ½ times the (reduced) hourly rate. To illustrate this reduction, assume that an employee is paid $12.50 an hour or $500 a week. If the employee worked 60 hours in a given week, under the standard method for computing overtime he would be paid, on top of his usual pay, for 20 hours at an hourly rate of 1.5 x $12.5 which results in overtime pay of $375, and total pay for the week of $875.

If the same employee working the same number of overtime hours is paid under the FWW method, he would be paid for 20 hours at an hourly rate of .5 x 8.33 which results in $83.33 of overtime pay and total pay for the week of $583.33. Using the FWW method thus results in a total savings of 78% in overtime pay. That savings rate decreases as overtime hours decrease and increases as overtime hours increase.

Other Considerations

It is important to note that use of the FWW method may prove unpopular with employees because it results in a lower rate of hourly pay with each additional overtime hour worked by the employee. At the same time, however, it assures the employee the same weekly salary even if hours worked in a given week fall below 40.

There are many nuances and qualifications on the use of the FWW method that are too extensive and detailed to include in this Email Alert. To find out if the FWW method may be right for any of your employees, please contact Susan Burton or Boyce Cabaniss.

Graves, Dougherty, Hearon & Moody, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701 • 512.480.5600
www.gdhm.com