

EMPLOYEES PAID BY COMMISSION ARE OFTEN STILL ENTITLED TO OVERTIME

QUESTION: I own a company that manufactures and installs electronic systems for businesses. It's been my experience that people work harder when they are paid commissions, so I pay all my employees that way and don't worry about overtime. But someone told me that I might be breaking the law by paying them in this manner. Is that true?

ANSWER: Although some commissioned employees are exempt from overtime, it doesn't look like your employees fit into this category. That's because they are not involved directly in "retail," but are instead providing services to businesses that in turn serve the ultimate consumer. For more information on this issue, see our website below.

We will assume, then, that you must pay overtime to these employees. But how do you calculate overtime for people that are paid solely on commissions?

You are in luck! This week, as promised, we will explain how to calculate overtime for commission-paid employees.

Overtime, of course, is based on hours worked. The employee's weekly compensation, then, must be converted into an hourly rate - also known as the "regular" rate.

For commissioned employees, the regular rate is determined by dividing the total amount of compensation earned in the workweek by the total number of hours worked. The resulting figure is the regular rate for that week.

The regular rate is then multiplied by 0.5 (or divided by 2 - whichever you prefer), which will give you the "half-time rate." Multiple the half-time rate by the number of hours over 40, and you have correctly calculated the overtime you owe for the week. Now just add the overtime to the already-earned commission, and that is the total compensation due to the employee for that workweek.

Here's the same formula with some numbers plugged in as an example:

Let's say one of your employees earns a commission of \$1100 in a workweek. In the same workweek, that employee worked 44 hours, so he is entitled to 4 hours of overtime.

Here is how you would calculate overtime for that employee:

- \$1100 commission (total compensation for the workweek)
- divided by 44 (total number of hours worked)
- equals \$25.00 (now you have the regular rate for that workweek)

- Multiply \$25.00 by 0.5 (or divide it by 2). This computes to a half-time rate of \$12.50.
- Multiply \$12.50 by the number of overtime hours worked (in this case, 4 hours). This amounts to \$50.00.
- Now you simply add that \$50.00 to the \$1100.00 the employee already earned for the workweek, arriving at a total of \$1150.00.

Why should you use .5 (half-time) instead of 1.5 (time-and-a-half)? The employee has already been paid a commission amount, which represents straight time for all hours worked, so only an additional “half-time” is due for the overtime hours.

One final caveat: as employers apply this formula, it is important to keep in mind that the regular rate may not be less than the minimum wage (currently \$7.80 an hour).

Next week we'll explain how to calculate overtime when employees work for two or more different hourly rates for the same employer.

For this and more information about important issues affecting Oregon employers, including seminars provided by our Technical Assistance staff, please visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.