

A "WORKWEEK" IS NOT WHAT IT MAY SEEM

QUESTION: My employees work Monday through Friday from 8:00 to 5:00. We have a new business accountant, Janice, who asked me what our "workweek" is.

I told her it is Monday through Friday from 8 to 5. She says that is not correct and that I need to identify a workweek that is seven days long. I told her that was crazy, and that I would never ask my employees to work seven days in a row! Nevertheless, she keeps telling me that we need to define a seven-day workweek in order to calculate overtime due to employees. The thing is, we never have to pay overtime because in those extremely rare situations when one of our employees has to work extra, we just allow them to take time off of their choosing as "comp time" for the overtime effort.

I'm so confused. Will you please explain what is wrong with sticking to a five day workweek?

ANSWER: Janice is correct. Despite the somewhat misleading title, a "workweek" has less to do with the schedule actually worked by an employee than it does with calculating overtime. A workweek is simply a way of measuring whether overtime (more than 40 hours) is worked in a seven-day time period.

Wage and hour laws define "workweek" as any seven consecutive twenty-four hour periods (seven consecutive days) as determined by each employer. Employers must establish and maintain a fixed period of seven days and must stick to that period regardless of how many hours an employee actually works. The workweek you establish will be used to determine whether overtime compensation is due to an employee, and if so, the amount of the overtime due.

Example: Jane is a secretary who works 10 hours on Monday, 10 hours on Tuesday, 4 hours on Wednesday, 9 hours on Thursday, and 9 hours on Friday. If the employer's workweek is Sunday at midnight until Saturday at 11:59 pm, Jane has worked 42 hours that week and must be paid two hours of overtime. However, if the employer's workweek is Wednesday at 5:00

pm until the next Wednesday at 4:59 pm, Jane has only worked 22 hours in the workweek and is not entitled to overtime.

Once a workweek is established, employers may change it only if the change is intended to be permanent and is not designed to evade or manipulate overtime compensation requirements. In other words, while an employee's actual working schedule can change continually, you could not similarly shift workweeks. Workweeks must be fixed and unchanging.

As for your comp time arrangement, you should be aware that providing employees time off in lieu of overtime compensation when an employee works over 40 hours in a work week is not a legal option for private sector employers. (Public sector employees may accrue comp time in lieu of overtime pay, subject to specific requirements.) Private sector employers may provide employees who work overtime hours with time off as long as they do so in addition to paying employees any overtime compensation due. In other words, as long as the employer complies with the obligation to pay employees at the overtime rate for all hours the employee works over 40 in a single workweek, the employer may provide time off or other extras on top of the overtime compensation.

There are some exceptions to the overtime compensation for employees of manufacturing establishments and for minors.

For more information on this and topics concerning Oregon employers, including information about the seminars provided by our Technical Assistance Unit, visit our website at www.oregon.gov/boli/ta. You can also give us a call at 971-673-0824.