

## **GETTING OVER OVERTIME CONFUSION**

### **Question:**

My employees work 9 a.m. to 5 p.m., Monday through Friday. They work those hours every week, so it seems logical that I would call that their “workweek.” Therefore, when I calculate overtime, I base it on whether they worked over 40 hours that week. But what happens if they work a few extra hours on Saturday? Do I need to pay them overtime?

### **Answer:**

Despite the apparent logic of defining a “workweek” as the hours actually worked in a week, that’s not how the law characterizes it. A more useful way of thinking about a workweek is as a measuring tool for calculating overtime.

Put simply, both federal and state laws define “workweek” as “seven, consecutive 24-hour periods that begin and end at the same time each week.” This has nothing to do with the actual time the employee spends working or whether their work schedule changes from week to week. Rather, the workweek is a fixed period that never changes, and its only function is to measure overtime.

Employers are required to determine the day and time when the company’s workweek begins, and to record it in their books. For example, many employers set their workweeks from Sunday at 12 a.m. until Saturday at 11:59 p.m. You can have different workweeks for different employees if you want, but the important thing is that each workweek begins and ends at the same time. The workweek can be changed, but “only if the change is intended to be permanent and is not a subterfuge to avoid overtime.”

The way you set your workweek can make a big difference in whether your employees are entitled to overtime.

For example, let’s say your employee works Monday through Friday, 8 a.m. to 5 p.m., with an hour for lunch each day. Because of an unexpected project, he is required to work until 9 p.m. on Tuesday, but he makes it up by coming in four hours late the next morning. If your workweek was Sunday through Saturday as illustrated above, you would not owe this employee any overtime - his schedule has varied but he has adjusted his hours to remain at 40 in the workweek.

But let’s say your workweek was Wednesday from 6 a.m. through Wednesday at 5:59 a.m. Since each new workweek initiates a new overtime count, you cannot go back to the previous workweek and try to “even out” the Tuesday and Wednesday hours. In other words, you owe your employee 4 hours of overtime for that workweek.

### **Question:**

How do I calculate overtime if my payday falls in the middle of the workweek?

### **Answer:**

Paydays and workweeks are two different things, and one is not necessarily related to another.

For example, if your workweek is the Sunday through Saturday example cited above and your payday is on a Tuesday or Wednesday, you don't have to "predict" the overtime your employee may earn that workweek and pay an estimated portion of it. Rather, if your employee does earn overtime during that workweek, you can just wait and pay it to him on the next regular payday.

**Question:**

We give our employees Memorial Day off with pay, but one of my employees says he is planning to work an extra three hours during the week to get everything done. With the holiday pay, his timesheet will show 43 hours for that workweek. Does that mean I have to pay him three hours of overtime?

**Answer:**

No. Overtime is based only on hours actually worked.

**For more information about this and other important issues concerning Oregon employers, including the seminars conducted by our Technical Assistance Unit, please visit our website at [www.Oregon.gov/boli/ta](http://www.Oregon.gov/boli/ta) or call us at 971-673-0824.**