DOUBLE NO TROUBLE

QUESTION: What started as a small skirmish has erupted into an all out mutiny! A few weeks ago we began scheduling a small fraction of our workforce for Saturday shifts, which is unusual for us because we are a Monday through Friday operation. We asked employees to volunteer to work the Saturday shift because we thought it would be more diplomatic than dictating that certain employees had to report to work on a regular day off. Of course, following the law, we pay the Saturday workers double time.

Once the employees started learning about the double time pay, they began battling over the limited Saturday shifts. Some employees have even called in sick during the week and claimed they should have an opportunity to make up the time they missed by working all available Saturdays. I have heard rumors that these employees are not really sick, but are simply trying to manipulate the workweek so that they make more money for working the same number of hours.

We need some ideas on how to diplomatically delegate the higher paying, limited availability Saturday shifts. And let me just vent a little, too, because even though I -- somewhat -- understand why employers have to pay double time for holidays, one would think the lawmakers who force employers to pay double time for weekends would be a bit more sensitive to the fact that these kinds of issues are inevitable in the workforce, not to mention patently unfair to those who work only weekdays!

ANSWER: Good news and bad news: The bad news is you are wrong about what the law requires. The good news is you are wrong about what the law requires! Employers are not legally obligated to provide employees with holidays off or to pay extra compensation to employees required to work holidays or weekends.

Employers have no legal obligation to pay employees double time, time-and-a-half, or any other premium pay on weekends, holidays, or other non-routine work days. Employers must only comply with federal and state overtime laws, which require employers to pay employees time-and-a-half their regular rate of pay for all hours in excess of 40 in a work week. Beyond that it is the employer's own policy or practice which determines whether (and how much) holidays, weekends or any other hours worked are compensated.

For example, some employers have a policy of paying premium rates when employees must work on a weekend (especially Sundays), on holidays, or if employees are unexpectedly called in to work on a scheduled day off or vacation day. However, even employers who have no formal policy may have created an obligation to pay employees extra compensation for such work hours if they have a past practice of doing so.

This is where you should pay special attention, because based on the facts you provided you have no doubt established a practice of paying double time for Saturday shifts that employees would be reasonable in relying on in believing they would be compensated the same way for working on Saturdays. If you decide to change this in the future you must provide employees advance notice of the change (preferably in writing) and clearly articulate what the future practice will be.

As for a fair method of recruiting employees to work Saturdays, many employers successfully utilize a rotating list which provides each employee the same number of opportunities to work extra shifts. Using such a method, whether the additional work hours are undesirable or desirable, the opportunities are made available equally to all employees.

Of course, employers must comply with the terms of applicable employment contracts like collective bargaining agreements (union contracts), which often provide for premium compensation for extra shifts, holidays, and other expressly defined situations.

For more information on this and other important issues affecting Oregon employers, including information about seminars given by our Technical Assistance Unit, please visit our website at www.oregon.gov/boli/ta. In addition, feel free to call us at 971-673-0824.