

Overtime is Time and a Half After 40 Hours ...Right? Maybe Not Anymore

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If you have been in the business for any amount of time, you know that it is impossible to avoid paying overtime to your groundskeepers and mowers. In fact, many of you may fondly remember earning overtime hours when you were younger. But now, money is tight and there is pressure to save money wherever you can. What if you no longer had to pay overtime at time and a half and you could simply continue to pay the hourly base rate for all hours worked. That may soon be a possibility due to a case that was recently handed down by the Federal Court for the Northern District of Illinois.

Background: The Fair Labor Standards Act (FLSA) was passed in 1938 with the intent of providing better paying, safer, and increasing the number of workers in the workforce. In addition to limiting the age at which a child could start working full time, the FLSA also lays out the minimum amount an hourly worker must be paid, as well as when and how much overtime must be paid.

So when exactly must overtime be paid? After 40 hours of work in any workweek, overtime must be paid. The FLSA defines a workweek as seven consecutive 24 hour periods. There is no requirement that it is Sunday through Saturday or Saturday through Friday. It can be Tuesday through Monday or whatever other set of days a company elects to have as their "workweek". The only limitation on this is that a company cannot continually change the set "workweek" with the intent or effect of depriving employees of overtime pay. Finally, averaging the hours of employees over the course of a pay period may not be done to avoid paying overtime.

How much must be paid for overtime hours? The FLSA requires all hours worked over 40 in a workweek to be paid at base rate times 1.5, also known as time and a half. There are no requirements that overtime be paid for nights, weekends, holidays, or any other time, unless the hours worked on those days are greater than the allotted 40 hours for that workweek. Overtime pay for those situations can be agreed upon between an employer and employee, but the law does not

require it.

There is also no requirement for "doubletime" pay under the FLSA. However, once again, an employer and employee can agree to a "doubletime" pay arrangement for certain types or hours of work.

Can an employee waive overtime pay? No. Regardless of whether an employee wants, or doesn't want overtime, they must be paid overtime. The law functions this way to prevent the mistreatment of workers that may not know their rights, or may be so desperate for the work that they will agree to almost anything.

What about all of the exemptions to overtime pay? There are many exemptions to the FLSA's overtime requirements, encompassing positions such as insurance adjusters, outside sales employees, executives, and many more categories. Golf course grounds workers generally must be paid overtime due to the nature of the work they do. What the government considers blue collar work is rarely exempt from overtime.

The Seasonal Exemption

There is also an exemption from the FLSA's overtime pay requirements which is called the Seasonal Exemption. This is an exemption from the minimum wage and overtime provisions of the FLSA for "any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33-1/3 per centum of its average receipts for the other six months of such year." This exemption has often been used by establishments such as amusement parks that shut down for the winter.

Because the language of the statute refers to receipts for any six months (not necessarily consecutive months), the monthly average based on total receipts for the six individual months in which the receipts were smallest, should be tested against the monthly average for six individual months when the receipts were largest to determine whether this test is

met. Confusing, I know.

Recently, the Department of Labor sued the Rich Harvest Farms Country Club, just outside of Aurora, Illinois, for failing to pay overtime to their employees. Rich Harvest argued that they fell under the seasonal exemption and was successful in getting the suit dismissed. This means that they no longer will be required to pay overtime to their employees (provided the Department of Labor does not appeal the case and win).

Does this mean your golf course no longer needs to pay overtime? Not necessarily. Other courts in other parts of the country have held the opposite from this case, and a lot of it may depend on what other facilities your club provides. According to some cases, golf courses within a resort do not qualify because the purpose of the course is to attract people to stay at the hotel. What this means is that some courses will fall under the category of a "recreational establishment", while others will not.

As with many laws, there is rarely a cut and dried answer here. Whether or not you have to pay overtime under the FLSA or may be exempt as a recreational establishment will depend on the unique circumstances of each course.

If this area of the law interests you and you would like to talk more about it, feel free to contact me to tell about your course!

This article provides general information on employment & overtime matters and should not be relied upon as legal advice. A qualified attorney must analyze all relevant facts and apply the applicable law to any matter before legal advice can be given. If you would like more information regarding Employee Compensation and overtime issues, please contact Patrick McGuinness at 651-206-3203.

(Editor's Note: Patrick McGuinness is one of the founding partners of Zlimen & McGuinness, PLLC. His law practice focuses on assisting members of the Green Industry. He is also part owner of One Call Property Care, LLC a Minneapolis landscaping & property management company. He can be reached at pmcguinness@zmattorneys.com