Overtime – Which Employees Are Entitled To It And How Much Do They Get?

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Business owners frequently get tripped up with the payment of overtime wages to their employees. Often, failure to properly pay overtime to employees is for one of two reasons. First, many employers simply refuse to pay overtime, regardless of their knowledge of New Jersey Wage Payment and Wage and Hour Laws. Second, many employers are unsure which employees are exempt. Even good faith mistakes can be costly for employers, where there is no intent to deprive an employee of wages. Below is a list of the most frequently asked questions employers ask and the appropriate answers to those common questions. These guidelines will help prevent you from getting a notice in the mail from the New Jersey Department of Labor.

How many hours must an employee work to be entitled to overtime?

Employees who work more than forty (40) hours in a work week are entitled to overtime pay at a rate of one and one-half (1 ½) times the employee's regular rate of pay.

Which employees are entitled to overtime?

Only non-exempt employees are entitled to overtime. Exempt employees include those individuals employeed in a bona fide, executive, administrative or professional capacity.

· Executive employees are generally those employees who manage the business or department in which they are employed, regularly direct two or more employees and have the authority to hire, fire advance or promote employees or recommend the hiring, firing, advancement or promotion of employees.

· Administrative employees are defined as those employees performing office or non-manual labor directly related to the management or business operations of the employer and whose duties include the exercise of discretion and independent judgment regarding matters of significance.

· Professional employees are defined as requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. To be qualified as exempt, the employee must be paid on a salary basis at a rate of not less than $455.00 per week.

There are several other exempt employees under the statute, such as drivers, computer employees and outside sales employees.

Do I have to pay overtime to employees who work holidays or weekends?

No. Employers must only pay overtime if an employee has worked more than forty (40) hours in a given work week.

Can I require that an employee work overtime?

Yes. There is no statute in New Jersey that precludes an employer from requiring employees to work overtime. However, if there is a collective bargaining agreement or the employee has a disability that limits the number of hours an employee can work, further inquiry is required.

Am I required to pay employees wages during a declared state of emergency?

No. New Jersey law does not require an employer to pay an employee for time not worked. If the non-salaried employee has accrued paid leave, an employee may use that paid leave during an office closure. Generally, a salaried employee would get his or her regular pay during an office closure.

What are the penalties if my business fails to pay overtime?

The penalties and fines for failure to pay overtime can be substantial. Generally, each day and/or week that the employer fails to adhere to the Wage Payment Law is considered a separate offense. The proper wages must always be paid to the employee. An employer who knowingly and willfully fails to pay overtime may be guilty of a disorderly persons offense with a fine ranging from $100 to $1,000 for each offense, with the possibility of jail time. Administrative penalties start at $250 for the first offense and $25.00 to $500 for each subsequent offense. In addition, administrative fees, interest, and attorneys fees may also be levied.

An employer's failure to adhere to the New Jersey Wage Payment and Wage and Hour Law has serious implications. In addition to the penalties mentioned above, an employer may be audited by the Department of Labor. One complaint for one employee may open up the Pandora's Box to many other claims once the Department of Labor analyzes your company's wage payment practices.

In many circumstances, detailed analysis may be necessary to determine whether an employee is exempt or non-exempt. It is essential for an employer to consult with employment counsel to make sure that the proper determination is made. Contact Andrew Berns at Einhorn Barbarito to evaluate your company's wage payment practices.