

**Vicki M. Lambert, CPP**

***White Paper Report:***  
***Calculating Overtime the FLSA Way***

**Vicki M. Lambert, LLC**  
**Vickimlambert.com**  
**702-463-7603**

The overtime requirements contained in the Fair Labor Standards Act (FLSA) is one simple sentence-- “unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay”. This one sentence regulation sounds simple but is actually fraught with pitfalls for the employer who does not understand all the terms in the sentence or the concepts behind the calculations. Two common erroneous conceptions surrounding overtime include (1) that overtime is always calculated by taking one and one-half times the employee’s hourly rate times the number of overtime hours and (2) that the term “regular rate of pay” is another way of saying the employee’s file rate, hourly rate or normal rate. Relying on these two mistaken concepts can be expensive as a medical center in Minnesota found out when it had to pay \$48,034 in back overtime to 287 employees for misunderstanding what has to be included in regular rate of pay.

The regular rate of pay is a calculated hourly rate. It includes all remuneration for employment except certain payments excluded by the Act itself. Every type of payment that must be included in the regular rate of pay cannot be listed here. But the more common ones include shift differential, non-discretionary bonuses (bonuses promised to employees before the work begins), promotional bonuses, and cost of living adjustments. Not included in the regular rate are such payments as expense reimbursements, discretionary bonuses, gifts on special occasions, and payments for vacation, holidays, or illness. The FLSA looks at paying an employee in two stages, all the straight time and monies and then overtime premium. The regular rate of pay is used to calculate the overtime premium.

The regular rate of pay is defined as the total remuneration for the employee (except those excluded by law) in a workweek divided by the total number of hours actually worked in the workweek. For example: An employee has an hourly rate of \$8.00 and worked 46 hours in the workweek. The following is the proper FLSA calculations:

$46 \times \$8.00 = \$368.00$ —This is all the straight time owed to the employee for the hours worked or the total remuneration.

$\$368.00/46=\$8.00$ —This is the total remuneration owed the employee divided by the total hours

$\$8.00 \times .5 = \$4.00$ —This is the regular rate of pay

$6 \times \$4.00 = \$24.00$ —This is the number of overtime hours times the regular rate of pay. This is the overtime premium.

$\$368.00 + \$24.00 = \$392.00$ . This is the amount owed the employee.

Now let’s do the same example again but this time adding a non-discretionary bonus of \$10. The erroneous common method would calculate the gross pay as:  $40 \times \$8.00 = \$320.00$ ;  $\$8.00 \times 1.5 = \$12.00$ ;  $6 \times \$12.00 = \$72.00$ ;  $\$320.00 + \$72.00 = \$392.00 + \$10.00 = \$402.00$ . However the correct FLSA method would calculate the gross pay as:  $46 \times \$8.00 = \$368.00 + \$10.00 = \$378.00$ ;  $\$378 \div 46 = \$8.21$ ;  $\$8.21 \div 2 = \$4.10$ ;  $\$4.10 \times 6 = \$24.60$ ;  $\$378.00 + \$24.60 = \$402.60$ . The difference with these low wages is only \$.60. But if audited by the DOL, the first calculation would not pass the DOL audit and would result in back wages owed to the employee. Remember, there is no de minimis when it comes to wages owed. The DOL does not look at each individual employee but at the overall compliance issue. Is the employer in compliance is the issue and this employer would not be in compliance because it failed to use the proper method. This type of calculation must be programmed into most payroll systems.

The major problem arises when a nondiscretionary bonus covers a period of time longer than a workweek. The FLSA requires that the bonus be apportioned back over the workweeks of the period during which it was earned. For example, employee A was promised a bonus in February if a project was completed in May. The employee worked overtime for that period and completed the project on time. All the overtime earned in February through May must then be recalculated to now include the bonus and the difference paid to the employee. The employee must receive additional overtime pay for each workweek in which overtime was worked during that period.

Calculating overtime under the FLSA method is a tedious manual calculation. Most payroll systems cannot handle the calculations if the bonus covers more than one workweek due to the fact that the information is unavailable to the system. The average payroll system does not store the employee's time records by payperiod. It stores by current payroll, month to date, quarter to date and year to date. This precipitates these types of calculations being done the old fashion way, by hand or Excel spreadsheet. The exception to this is if the employer utilizes an electronic timekeeping system that is capable of storing and retrieving timesheets over periods of time in the increments needed to perform the calculations.