

July 15, 2009

Comp Time vs Overtime:

Question; Is it legal to allow an employee to accrue compensatory (comp) time in lieu of paying overtime?

Some employees would actually prefer this arrangement. Unfortunately, under the FLSA, private employers are not allowed to provide comp time to nonexempt employees who work more than 40 hours in a workweek. In a nutshell, if overtime is worked, it must be paid. However, identifying when overtime is worked can provide its own challenges for different payroll periods, such as bi-monthly payrolls (pay twice per month, ex. 1st & 15th). Since a “workweek” for overtime purposes is seven 24-hour periods, a bi-monthly payroll period can include hours worked that are subject to overtime calculations in both pay periods. Adequate records should be maintained to make certain that hours calculated for overtime purposes are based on the seven day period requirement irregardless of the pay period the wages are paid in.

Also under the FLSA, an employee cannot agree to be paid at an overtime rate less than that required by law. Although this may sound like a “duh” statement, in a time when employers are finding it necessary to reduce hourly wages and employees are willing to make sacrifices to retain employment (such as reducing wages and hours), it’s important to be aware of the limitations.

Additional information concerning compliance with the Fair Labor Standards Act (FLSA), can be found at the U.S. Department of Labor web site at <http://www.dol.gov/esa/whd/flsa/>.

This notice is not designed to provide legal advice but rather to provide information. Always seek guidance from an expert before taking any action based on the information provided in this newsletter.



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