

Requirements for Overtime Pay

Governing Legislation

The governing legislation for overtime pay is the federal Fair Labor Standards Act (FLSA).

Overtime Requirements of FLSA

The Fair Labor Standards Act (FLSA) requires employers to pay overtime wages to nonexempt employees for each hour worked in excess of 40 hours within a single workweek. These overtime wages must be paid at a rate of at least one and a half times the employee's regular pay rate.

Each workweek stands alone and cannot be averaged with two or more workweeks.

Nonexempt employees may not waive the FLSA overtime provisions.

Overtime for 37.5-Hour Workweeks

If an operating location has a standard workweek that is 37.5 hours long, and a nonexempt employee works more than 37.5 hours in a week, up to 2.5 hours of the excess time worked, that is, the difference between the length of the workweek and the 40-hour per week threshold for overtime, is not considered overtime under FLSA.

In such cases operating locations must either compensate the employee at the regular rate for the nonovertime portion of the excess time worked or provide paid time off in lieu of wages. For more information, see [Paid Time Off in Lieu of Wages Policy](#).

Includable and Excludable Types of Compensation in Regular Rate

When figuring the employee's regular rate of pay for overtime purposes, all types of compensation need to be considered, not simply the normal wage. Some types of pay are includable in the regular rate of pay, while others are excludable.

Listed below are examples of different types of compensation, grouped by includable and excludable in calculating overtime pay.

Includable:

- Salary
- Bonuses (other than lump sum discretionary bonuses)
- Shift differential pay
- Housing and other non-cash payments

Note: If the employer compensates the employee with non-cash payments (such as lodging) the reasonable cost or fair market value of the goods and/or facilities provided must be included in the regular rate of pay.

Calculation: (value of housing + salary) ÷ # hours in week = regular rate

Excludable:

- Discretionary bonuses
- Severance pay
- Travel expenses
- Uniform allowances

For any further clarification, please contact RF central office with questions regarding specific types of pay to include or exclude.

Calculating Overtime for Nonexempt Employees with Two or More Rates of Pay

There are two options for paying overtime when a nonexempt employee has two or more rates of pay.

- Pay overtime on the higher hourly rate, or
- Add all earnings and divide by actual hours worked using the calculation presented in the following table. An example is also provided using the following scenario:

Hourly wage as an Administrative Assistant I equals \$10.25

Hourly wage as a Clerk II equals \$9.25

Hours worked in relevant work week equals 50

Calculation	Example
Total Regular Pay Due - multiply hours worked at each pay rate by the appropriate regular rate of pay and add the results.	20 hours * \$10.25 = \$205.00 30 hours * \$9.25 = \$277.50 Total Regular Pay Due = \$482.50
Combined regular rate of pay - divide total regular rate pay due by the number of hours worked.	Combined Regular Rate of Pay \$482.50 / 50 hours = \$9.65
Half-time rate - multiply the combined regular rate of pay by .50.	Half-Time Rate \$9.65 * .50 = \$4.83
Overtime due - multiply half-time rate by hours worked over 40.	Overtime Due \$4.83 * 10 hours = \$48.30

Complying with Sponsor Guidelines

Operating locations must review sponsor guidelines to determine whether the sponsor permits the charging of overtime pay to the award. If the sponsor does not permit the charging of overtime pay to the award, operating locations must avoid overtime or identify another source of funds for overtime payments.

Documenting Overtime Payment

For information regarding the requirements and procedures for documenting overtime payment, refer to the Attendance and Time Reporting section.

Responsibilities

Operating Locations

The Research Foundation operations manager is responsible for

- Ensuring that all nonexempt employees are compensated for overtime worked and that overtime payments are documented
- Complying with sponsor guidelines

References

For further information regarding the policies and procedures associated with time reporting, refer to [Time Reporting Policy](#).

Change History

- **April 22, 2005** - Added section on types of compensation to include and exclude in calculating overtime pay.
- **December 30, 2000** - New document.

Feedback

Was this document clear and easy to follow? Please send your feedback to webfeedback@rfsuny.org.

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