U.S. Department of Labor
Wage and Hour Division

(July 2020)

Fact Sheet #82: Fluctuating Workweek Method of Computing Overtime Under the Fair Labor Standards Act (FLSA) / "Bonus Rule" Final Rule

Many employees have work schedules that vary from week to week. As a result, the total number of hours an employee works may increase or decrease from one week to the next. This type of schedule is called a "fluctuating workweek."

The FLSA requires that employers pay most employees in the United States at least the federal minimum wage for each hour they work. It also requires that they receive overtime pay at a rate of at least time and one-half their regular rate for each hour they work over 40 in a workweek. Some employees are paid hourly, while other employees are paid on a different basis, such as salary, commission, or piece rate. An employee's regular rate is calculated by dividing the employee's total pay (except for certain statutory exclusions) in any workweek by the total number of hours actually worked in that week. Fact Sheet #56A provides additional information about determining the regular rate.

Fluctuating Workweek Method

Many employers simply pay an hourly rate and overtime at time and one-half that hourly rate for each hour over 40. But there are also other allowable ways to compensate nonexempt employees and to calculate the overtime pay they are owed. Under the fluctuating workweek method, which is explained at 29 CFR 778.114, nonexempt employees receive a set weekly salary no matter how many hours they work, plus additional overtime pay when they work more than 40 hours in one workweek. In other words, the employee's weekly salary does not change whether the employee works 30 hours, 40 hours, or more. In weeks when the employee works more than 40 hours, the employee receives additional overtime pay for each hour of work over 40.

Under the fluctuating workweek method, overtime pay is based on the average hourly rate produced by dividing the employee's fixed salary and any non-excludable additional pay (e.g., commissions, bonuses, or hazard pay) by the number of hours actually worked in a specific workweek. The average hourly rate will change from week to week depending on how many hours the employee actually worked. The employee then receives at least an additional 0.5 times (or additional "half time") that rate for each hour worked beyond 40 in the workweek.

One condition for using this method is that the employer and employee agree that the set salary is compensation (apart from overtime premiums and any additional non-excludable pay) for all of their hours worked each workweek, whether they work few or many hours. To use the fluctuating workweek method, employees' hours actually must change on a week-to-week basis, and employees must receive the agreed-upon fixed salary even when they work less than their regularly scheduled hours.

Note: The fluctuating workweek method cannot be used if the employee's salary is understood to be compensation for a specific, fixed number of hours per workweek. For example, the fluctuating workweek method would not apply to employees of public agencies engaged in law enforcement or fire protection activities who receive a salary as compensation for working specific, fixed hours within a work period (up to 28 days) under Section 207(k) of the FLSA. (For these employees, the basic principles of calculating the regular rate that apply to a "workweek" also apply in the same way to a "work period." *See* 29 CFR 553.233; WHD Opinion Letter FLSA 1216, 1986 WL 1171126 (Nov. 19, 1986).)

"Bonus Rule"/Final Rule

Effective August 7, 2020, the Fluctuating Workweek/"Bonus Rule" Final Rule clarifies that employers ***can*** pay bonuses or other incentive-based pay, such as commissions or hazard pay, above and beyond workers' fixed salaries when they are paid using the fluctuating workweek method. It also states that such payments must be included when calculating the regular rate unless they are excludable for some other reason explained in the law. See Section 207(e)(1) - (8) of the FLSA for information about payments that can be excluded from the regular rate.

When an employee receives non-excludable incentive pay such as commissions or hazard pay, it is added to the weekly salary to determine the total straight-time pay for the week. To calculate the average hourly rate, divide the total straight-time pay (salary plus non-excludable incentive pay) by the number of hours the employee actually worked that week. The employee then receives an additional 0.5 times (or additional "half time") of *that rate* for each hour worked beyond 40 in the workweek.

In the examples below, an employee works hours that change from week to week and is paid a fixed weekly salary of $600.00. The employee understands this fixed weekly salary will not change if hours of work increase or decrease.

Examples: Fixed Salary for Fluctuating Hours With and Without a Production Bonus

Workweek 1:

Employee's Salary	$600
No Bonus	+ $ 0
Total Straight-Time Pay	$600
Hours Worked	48

In workweek 1, the employee has earned the fixed weekly salary of $600 with no bonus pay. The employee worked 48 hours, and is due the weekly salary plus additional overtime pay at 0.5 times the average hourly rate, or "half-time," for the 8 overtime hours worked. To determine the overtime due and total compensation owed the employee, complete the following steps:

1. Determine the employee's average hourly rate. Divide the salary, $600, by the number of hours worked, 48 hours. The result is the average hourly or regular rate of $12.50. [$600 ÷ 48 = $12.50]
2. Next, multiply the average hourly rate, $12.50, by .5 to determine the half-time rate. In this case, the half-time rate is $6.25. [$12.50 x .5 = $6.25]
3. Multiply the half-time rate of $6.25 by the number of overtime hours worked, 8, to determine the total amount of overtime due, $50.00. [$6.25 x 8 = $50]

As a result, in workweek 1, the employee is due the $600 salary plus $50 in overtime pay for total compensation in the amount of $650. [$600 + $50 = $650]

Workweek 2:

Employee's Salary	$600
Production Bonus	+ $100
Total Straight-Time Pay	$700
Hours Worked	45

In workweek 2, the employee has earned the fixed weekly salary of $600 plus an additional production bonus. The employee worked 45 hours, and is due the weekly salary and the bonus plus additional overtime pay at 0.5 times the average hourly rate, or "half-time," for the 5 overtime hours worked. To determine the overtime due and total compensation owed the employee, follow the steps below:

1. Determine the total straight-time pay for the week. Add the fixed salary, $600, and the production bonus, $100, for a total of $700. [$600 + $100 = $700]
2. Determine the employee's average hourly rate. Divide the total straight-time pay, $700, by the number of hours worked, 45 hours. The result is the average hourly or regular rate of $15.56. [$700 ÷ 45 = $15.56]
3. Next, multiply the average hourly rate, $15.56, by 0.5 to determine the half-time rate. In this case, the half-time rate is $7.78. [$15.56 x .5 = $7.78]
4. Multiply the half-time rate of $7.78 by the number of overtime hours worked, 5, to determine the total amount of overtime due, $38.90. [$7.78 x 5 = $38.90]

As a result, in workweek 2, the employee is due the $600 salary and $100 production bonus plus $38.90 in overtime pay for total compensation in the amount of $738.90. [$600 + $100 + $38.90 = $738.90]

Deductions from the Fixed Salary

The fluctuating workweek method can be used only if the salary does not change even when the number of hours worked increases or decreases. However, employers may take occasional deductions from the employee's salary for disciplinary reasons such as willful absences or tardiness or for infractions of major work rules, as long as the deductions do not violate the minimum wage or overtime pay requirements of the FLSA.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: www.dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8:00 a.m. to 5:00 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When state law differs from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at **www.dol.gov/agencies/whd/state/contacts**.

U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

1-866-4-USWAGE (87-9243)
TTY: 1-866-487-9243
Contact Us