

**OVERTIME PAY ON
SCA CONTRACTS**

OVERTIME REQUIREMENTS OF FLSA AND CWHSSA

WORK IN MORE THAN ONE CLASSIFICATION IN A WEEK

OVERTIME REQUIREMENTS OF FLSA AND CWHSSA

- ◇ The SCA does not require overtime pay, but FLSA and/or CWHSSA overtime pay requirements may apply to SCA contracts. 29 C.F.R. §§ 4.180 and 4.181.
- ◇ FLSA has the broadest application, and contractors/subcontractors performing on contracts subject to the SCA may be required to compensate their non-exempt employees working on or in connection with SCA-covered contracts for overtime work pursuant to the FLSA overtime pay standards.
- ◇ CWHSSA applies to SCA contracts in excess of applicable monetary thresholds that may require or involve the employment of laborers, mechanics, guards, or watchmen. CWHSSA applies to federal DBA and SCA contracts in excess of \$150,000 that are subject to Federal Acquisition Regulation (FAR) procurement. 48 C.F.R. § 22.305. CWHSSA also applies to SCA contracts in excess of \$100,000 that are not subject to FAR procurement.
- ◇ CWHSSA applies to **laborers, mechanics, guards, and watchmen** for the time spent on covered contract work only (i.e., all time each employee spent working **on covered contracts** - excluding all commercial, non-government work). (Service employees on the contract who are not laborers, mechanics, guards or watchmen, are not subject to CWHSSA).
- ◇ FLSA requires the payment of time and one-half the “regular rate of pay” for all hours worked in excess of 40 hours in a week. *See* 29 C.F.R. §§ 778.107-778.109.
- ◇ CWHSSA requires the payment of time and one-half the “basic rate of pay” for all hours worked in excess of 40 hours in a week. The “basic rate of pay” under CWHSSA is the individual’s straight time hourly rate and cannot be less than the required “basic hourly rate” (generally listed in the “RATE” column) in an applicable SCA wage determination.
- ◇ In computing overtime obligations under the FLSA and CWHSSA, the contractor may exclude contributions to “bona fide” fringe benefit plans and/or cash payments made to meet fringe benefit requirements in an applicable SCA wage determination. 29 C.F.R. §§ 29 C.F.R. §§ 4.177(e) and 778.7.
- ◇ For example, for an employee who worked 44 hours on a covered contract as a janitor, where the wage determination rate for a janitor is \$15.00 (basic hourly

rate) plus cash payments of \$4.02 in lieu of health and welfare fringe benefits per hour per employee, the correct computations under the FLSA and CWHSSA would be:

$$\begin{array}{rcl}
 40 \text{ hours} \times \$ 4.02 & = & \$ 160.80 \text{ in fringe benefits} \\
 44 \text{ hours} \times \$15.00 & = & \$ 660.00 \text{ for prevailing wages} \\
 4 \text{ hours} \times \$15.00 \times \frac{1}{2} & = & \underline{\$ 30.00} \text{ for FLSA and/or CWHSSA O/T} \\
 & & \$ 850.80
 \end{array}$$

Note that for a wage determination including the “average cost” benefits the benefits would be computed for **all** hours worked ($\$4.02 \times 44 = \176.88).

- ◇ CWHSSA and FLSA do not require premium pay or overtime compensation for work on holidays, weekends, or days of rest. 29 C.F.R. § 778.102.
- ◇ CWHSSA and FLSA overtime pay requirements do not apply to non-work hours, such as paid holidays and paid leave. Such hours are not counted in the computation of overtime pay required under these federal overtime laws. Their overtime pay requirements apply only to hours worked. 29 C.F.R. § 778.218. Rules concerning “Hours Worked” are at 29 C.F.R. § 785.

WORK IN MORE THAN ONE CLASSIFICATION IN A WEEK

- ◇ When an employee in a single workweek works at two or more different types of work for which different nonovertime rates of pay have been established, his or her regular rate for that week is the weighted average of such rates. That is, the employee’s total earnings (except statutory exclusions) are computed to include compensation during the workweek from all such rates, and are then divided by the total number of hours worked at all jobs. 29 C.F.R. § 778.115.
- ◇ An employee who performs two or more different kinds of work for which different straight time hourly rates are established may agree with the employer, in advance of the performance of the work, to be paid during overtime hours at a rate not less than one and one-half times the hourly nonovertime rate established for the type of work he or she will perform during such overtime hours. (Thus, under this arrangement, the overtime pay is calculated based on the “rate in effect” for the type of work being performed during the overtime hours.) Additional detail specifying requirements that must be met in relation to “Computing Overtime Pay on the Rate Applicable

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to the Type of Work Performed in Overtime Hours” are at 29 C.F.R. §§ 778.415-778.419; in particular, section 778.419 addresses “Hourly workers employed at two or more jobs.”

- ◇ The following examples demonstrate two methods for computing the overtime premium pay under FLSA and/or CWHSSA for an employee who worked in different job classifications and at different rates of pay in the same workweek.

◇◇ An employee is hired to perform work on a covered service contract in two job classifications: painter and electrician. The wage determination rate for an electrician is \$22.00 (basic hourly rate). The wage determination rate for a painter is \$20.00 (basic hourly rate).

Method 1: Computation of the overtime **premium** based on the “regular rate” for the workweek.

Step 1: Determine the straight time wages due, excluding fringe benefits:

24 hours at the painter’s rate of \$20.00	=	\$480.00
20 hours at the electrician’s rate of \$22.00	=	<u>440.00</u>
Total straight time wages	=	\$920.00

Step 2: Calculate the “regular rate”:

$$\$920.00/44 \text{ hours worked} = \$ 20.91 \text{ regular rate}$$

Step 3: Compute the overtime premium due:

$$\frac{1}{2} (\$20.91) \times 4 \text{ overtime hours worked} = \$41.82$$

Method 2: Computation of the overtime premium based on the “rate in effect” when the overtime hours were worked. (See section 7(g) of the FLSA.)

	S	M	T	W	T	F	S
Painter hours		8	8	8			
Electrician hours					8	8	4

In this example the overtime hours occurred on Saturday. The overtime **premium** could be computed based as follows:

$$\frac{1}{2} (\$22.00) \times 4 \text{ hours} = \$44$$