

Time to Check Your Year-End Wage and Hour Compliance

Labor & Employment Law Update

By Sara Zorich on December 20, 2023

As we wind down 2023, your company may be sharing with its employees either through business closing periods or end-of-the-year bonuses. Employers must be cognizant that these generous gestures may carry compliance obligations for the business.

BONUSES

Employers must be careful when paying out bonuses at the end of the year to non-exempt employees. As with other bonuses, a holiday bonus must be included in overtime calculations for nonexempt employees **unless** it is completely discretionary or is a gift. If a bonus is promised or expected or is dependent on the quality, quantity or efficiency of production or hours worked, it must be included in the regular rate used for determining overtime pay. This becomes even more complicated at the end of the year. For example, suppose on January 1, 2023 the company promised a bonus if the production department hit their production budget by December 15, 2023. If the production department achieved this goal and each non-exempt employee was paid a \$100 bonus, that bonus would need to be allocated over the applicable period (50 weeks from 1/1 – 12/15). Then each non-exempt employee would become entitled to additional overtime for each week they worked overtime during that entire 50-week period, because the \$100 bonus payment increased their regular rate and therefore the applicable overtime rate.

Non-discretionary bonuses can also impact sick leave or other paid leave if the state law requires it be paid at an employee's "regular rate of pay."

CLOSURE OF BUSINESS

Non-Exempt Employees

Non-exempt employees, under applicable wage and hour laws, generally are only required to be paid for hours they actually work – and not for holidays or office closings (of course, employers are free to offer such pay). For example:

1. Non-exempt employees do not need to be paid for New Year's Day if they are given the day off.

2. If the business is closed during inclement weather (e.g., snow days, burst pipes), non-exempt employees do not need to be paid when the business is closed, and they are not working.
3. If employees report to work and are sent home early (e.g., due to imminent ice storm), then non-exempt employees only need to be paid for the hours they worked, and not for the time that they were sent home early and are not working.

Under federal law (and most state laws), non-exempt employees are entitled to overtime for hours worked over 40 in a workweek. Generally, paid holidays and other periods of paid non-work hours are not required to be counted toward hours worked for overtime.

Exceptions: *Various state wage laws, employer policies (e.g., employee handbooks) and other contracts may obligate an employer to pay employees for certain holidays or business closings, and even pay shift premiums for working on holidays. Further, an employer policy may state that the holiday is counted as “hours worked” for overtime purposes. Make sure to review your policies carefully when administering payroll for holidays and closure.*

Exempt Employees

Exempt employees are those who are not covered by the FLSA or state law overtime requirements. When paid on a salary basis, these employees’ salaries may not be reduced in any week in which they perform any work, except for limited circumstances (e.g., the employee’s personal absence not for sickness or disability, first/last week of employment). These exceptions do not permit an employer to reduce a salaried, exempt employee’s wages for holiday or inclement weather closures. Thus, these employees must be paid their regular, full weekly salary, even though the business is closed for a holiday or due to weather (assuming the weather closure was for less than a week).

Bottom Line: Employers need to be aware of how holiday or seasonal closures and bonuses may impact their overtime and other paid leave requirements for both exempt and non-exempt employees under federal and state law.

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