

e-Alert

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Pennsylvania Amends Overtime Calculation for Salaried Nonexempt Employees

Background

A new regulation, [34 Pa. Code § 231.43\(g\)](#), has been implemented for Pennsylvania employers pertaining to how salaried, nonexempt employees are paid overtime. Employers who pay nonexempt employees a salary may need to adjust their payroll practices to comply with this new wage and hour requirement in the state of Pennsylvania.

Summary

This new law differs from the federal Fair Labor Standards Act's "fluctuating workweek" method that is often used for salaried nonexempt employees. The FLSA method permits employers to determine the regular rate of pay for salaried, nonexempt employees by dividing all remuneration the employee earned by the total hours the employee worked that workweek, then multiplying that rate by the number of overtime hours worked and finally multiplying that number by 0.5.

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This new formula under the Pennsylvania Minimum Wage Act codifies that the FLSA method is not permissible. Instead, the regular rate must be determined by dividing all remuneration such as the employee's weekly salary, non-discretionary bonuses, and commissions by 40, rather than by all hours the employee worked that week. The employee's regular rate is then multiplied by 1.5 and then multiplied by the number of overtime hours to determine the amount of overtime pay due. This new formula has the potential to result in more overtime pay for nonexempt employees paid on a salary basis.

These rules do not address the regular rate calculation for nonexempt employees paid an hourly rate. A question regarding this specific calculation appears under the recently published [Frequently Asked Questions](#) on the Pennsylvania Department of Labor & Industry website, with the response being "this updated regulation will not change overtime pay calculations for hourly employees."

Employer Next Steps

- Pennsylvania employers who have salaried, nonexempt employees may want to evaluate their overtime practices and determine whether their formula follows these new requirements.
- If you are a Full-Service or Virtual HR client and have questions, please [email us](#).

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