

Overtime Guidelines for Household Employers

Overtime Eligibility

According to the Federal Labor Standards Act (FLSA) of 1938, household employees that do not live with their employers are eligible to receive overtime after forty hours of work in one work week (seven consecutive days). Household employees are covered by this act and are not exempt from this law (i.e. classified as “non exempt”). This applies to both full time and part time employees.

NOTE: due to the FLSA classification of nannies and other domestic workers as non exempt, they may not be salaried; they are considered hourly employees.

The employee must be paid at a rate of not less than 1.5 times their regular rate of pay. An employer cannot avoid paying overtime by averaging the number of hours worked over two (or more) weeks or by calling the employee a salaried worker, implying they are not subject to overtime. An employee may be paid on a salary, commission, or some other basis. Whichever way they are paid, the overtime pay has to be calculated on the average rate per hour derived from what they have earned in a week.

For example, if an employee making \$10/hr works 50 hours in a work week, the employer must pay $1.5 \times \$10$ per hour = \$15 per hour (the overtime rate). An employee can work any number of hours in a workweek as long as they receive the appropriate overtime pay. The employee’s workweek may begin on any day and at any hour of the day in that workweek period.

Live-in Employees

Federal law does not require paid overtime for live-in household employees. It is advised that live-in employees be fairly compensated for any extra hours they work and for longer hours than agreed in their employment contract. However, your state may have laws for live-in employees, which may result in having to pay an overtime rate.

State Overtime Laws

The laws for overtime vary state by state and sometimes can override federal law. Hourly employees in Texas are entitled to an overtime pay rate of at least 1.5 times their regular hourly wage for all overtime worked, if they work over 40 hours in a week. Overtime pay is not required for live-in employees.

Overtime and holidays

According to the FLSA, overtime is not required to be paid for holidays worked or for weekends worked. However, some employers do pay 1.5 times (or more) the regular rate of pay to their employees if they work during major holidays. This is at the discretion of the employer and should be agreed at the time of hiring.

GTM Recommendations

- Agree what overtime rate should be paid (in \$ per hour) in relation to the employee’s hourly rate (or salary).
- Agree when the overtime rate will occur (after 40 hours in a work week, or when individual state law requires).
- Agree if overtime should be paid on holidays and which holidays are recognized by the employer.