

Excerpt from Chapter Five

Time is Money: The FLSA (Fair Labor Standards Act) and Law Enforcement Employment

OVERTIME. All time worked over an employee's FLSA threshold is overtime work. An employee must be paid for all overtime work at a rate of not less than one and one-half times her regular rate of pay.^{xv} If a 40-hour per week employee has worked more than 40 hours during a workweek, s/he is owed overtime pay for each hour worked over 40. If an employee's total time worked during a workweek is not more than the applicable FLSA threshold number of hours for that employee, no overtime has been worked and no overtime pay is due.

FLSA Overtime "Trigger." The FLSA overtime rules "kick in" if and when – but only if and when – an employee has worked more than the prescribed amount of time during the prescribed workweek (or work period), measured as of the end of that workweek (or work period). If, during a workweek (or work period), an employee has not exceeded the applicable FLSA threshold, then the FLSA overtime rules are not implicated at all. They simply do not apply.

For example, suppose a 40-hour per week employee works a normal schedule of 5 days per week, 7 ½ hours per day.^{xvi} In a normal workweek during which s/he worked no additional hours nor took any time off, this employee will have worked 37 ½ hours. Since s/he did not work more than 40 hours, no FLSA overtime is due. The FLSA overtime rules have not been triggered. There is a "gap" between this employee's normal schedule and the applicable FLSA threshold. If this employee worked an "extra" 5 hours during that workweek, total hours worked would be 42 ½. Since her overtime threshold is 40 hours, s/he has 2 ½ overtime hours (not 5) worked in that workweek, for which s/he is entitled to overtime pay. The FLSA overtime rules were triggered, because at the end of the workweek the employee had worked more than the FLSA threshold of 40 hours. However, suppose this same employee worked 2 extra hours during the workweek. In this event, total time worked during that workweek was 39 ½ hours. No FLSA overtime pay is due, because s/he did not work more than her 40-hour FLSA threshold. It does not matter (for FLSA overtime purposes) that s/he worked some time in addition to the regularly scheduled number of hours. Those additional hours worked were not "overtime," because they were not "over threshold." They were "in the gap." The FLSA overtime rules were not "triggered."^{xvii}

^{xv} The regular rate is a major subject of Chapter Six.

^{xvi} This is entirely acceptable under the FLSA. The FLSA does not govern scheduling, nor guarantee any employee any particular amount of work time.

^{xvii} The only FLSA requirement in this instance is that the employee must be paid an amount at least equal to what the minimum wage would be for all the hours s/he worked. In other words, 39 ½ hours times the minimum wage amount. If the paycheck for that workweek was at least this amount, the FLSA has been satisfied. See, Chapter Seven.

“FLSA Overtime” vs. “Other Overtime.” Sometimes jobs pay premium wages based on computations different from the FLSA. For example, some jobs may pay premiums for work performed “outside of normal shift times,” or “over 8 hours in a workday.” This “extra” time worked may be called “overtime” and the extra pay called “overtime pay.” However, as can be seen from the foregoing discussion, these types of extra hours worked may, or may not, be overtime as the word is used in the FLSA.¹⁹ Whether extra time worked is *FLSA overtime* depends on whether total hours worked exceed the FLSA threshold, measured at the end of the applicable work period. Merely calling extra time worked “overtime,” or paying a premium for it, does not make it “FLSA overtime.”^{xviii} The FLSA overtime rules apply *only* if and when an employee has worked more than the prescribed number of hours in a specified period. This is another example of the FLSA using a word (“overtime”) in a technical way that may not be the same as its colloquial or common meaning.

^{xviii} There are some special FLSA rules which may permit employers to “credit” premium pay made for time worked which is not “FLSA overtime,” against its FLSA overtime requirements. This is a “pay due” matter, not a “time worked” or “overtime” matter, and is addressed in Chapter Six.