



## Two Methods for Reducing Overtime Costs

This column recently discussed the fluctuating workweek method of calculating overtime pay for nonexempt employees (see *Wage-Hour Alert*, issue 113, April 2001). It is one of three lawful means by which employers can reduce overtime costs. This month, with the help of attorney Jeff Pollack, a partner with the New York City law firm Mintz & Gold LLP, we look at the other two permissible approaches.

### Belo Plan

"The general rule is that employers must pay time and a half for any hours an employee works in a workweek in excess of 40. The so-called *Belo* plan is the exception to the rule because it allows you to pay the same total wage, including straight-time and overtime, for overtime workweeks of different lengths," Pollack says.

"The advantage for the employer is better control and predictability of payroll expenses. The predictability is good for employees too, since they can more easily plan their household budgets," he suggests. These advantages were originally validated by the U.S. Supreme Court in *Walling v. A. H. Belo Corp.*, 316 U. S. 624 (1942).

Pollack cautions that a *Belo* plan is lawful only when working hours from week to week cannot be controlled by the employer and vary significantly. Furthermore, under the regulations, the employee's "duties must necessitate significant variations in weekly hours of work both below and above the statutory weekly limit on nonovertime hours."

### Belo Plan, Fluctuating Workweek, Regular Workweek Compared

Here is an example of the *Belo* plan as compared/contrasted with the fluctuating workweek method and the regular method:

*Belo plan:* Sue is compensated under a valid *Belo* plan, guaranteeing her \$490 a week as total compensation for all work performed up to and including 60 hours, and specifying a regular rate of \$7 an hour. Sue works 60 hours in one workweek. She receives compensation of \$490. Only when she works more than 60 hours must she be paid anything in

addition to her weekly guarantee. However, in a week when Sue works only 35 hours or 30 hours, she would still receive \$490.

## The *Belo* plan gives the employer better control of payroll expenses.

*Fluctuating workweek:* Emily is paid a weekly salary of \$480 as straight-time pay for as many hours as she might work in the week. When she works more than 40 hours, she must be paid additional half-time based on her regular rate for that week. In a 60-hour week, the extra overtime premium would be \$80 [20 hours x (\$480/60 hours) x 1/2], giving her total pay of \$560—\$70 more than was received by Sue for a workweek of the same length.

*Regular time and a half:* Jane is paid \$12 an hour for up to 40 hours a week (\$480) and time and a half for any hours over 40. In a week when she works 60 hours, her straight time pay is \$720 (60 x \$12) and her overtime pay is \$120 (20 x \$6) for a total

of \$840, far more than was paid for the same amount of time under a *Belo* or fluctuating workweek plan.

### Choice of Workweek

"Under the FLSA, overtime compensation is computed on the basis of the employee's earnings and number of hours worked within a designated 'workweek,'" Pollack notes. (Under the FLSA regulations, a workweek is a fixed and regularly recurring period of... seven consecutive 24-hour periods.) If 40 hours or less are worked within any such 'workweek,' no statutory overtime pay is required.

"Many employers more or less automatically set the 'workweek' to coincide with the calendar week, or set one 'workweek' for all employees," Pollack observes. "In fact, you can set different workweeks for different groups of employees or even different individuals. How you set the workweek can have a substantial impact on overtime costs."

Note: An employer may change the designated workweek only if such change is permanent and not intended to evade FLSA overtime pay requirements.

*Example:* Steve starts work on Monday morning and works for 10 consecutive 8-hour days followed by 4 days off. Since his "workweek" starts on Monday, every other workweek he works a total of 56 hours, and must receive premium time and a half pay for 16 hours. A change in workweek changes the compensation: Steve continues to start work on Mondays, but the employer shifts his workweek to begin on Saturday morning. As a result, the new workweek splits his 10-day work tour down the middle. Now, in each designated "workweek" he works five 8-hour days, and the employer does not have to pay any overtime premium. ☺

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