STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
EMPLOYMENT STANDARDS

TITLE: HOW TO CALCULATE OVERTIME

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CHAPTER: RCW 49.46.130

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SEE ALSO: ES.A.9.2 ES.A.9.3, ES.A.9.4, ES.A.9.5, ES.A.9.6, and ES.A.9.7

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How to Calculate Overtime

This policy provides guidance on how to calculate overtime for employees who must receive overtime pay under RCW 49.46.130 for hours worked over 40 per workweek. **Employers must keep an accurate record of daily hours worked so they can properly calculate overtime**.

Overtime requirements described in this policy do not apply to employees who are exempt from overtime under RCW 49.46.130 or who are exempt from all Minimum Wage Act requirements under RCW 49.46.010(3). *See* ES.A.8.1, "Overtime," for further guidance on overtime requirements and exemptions and ES.A.1, "Minimum Wage Act Applicability," for a detailed discussion of the exemptions contained in RCW 49.46.010(3).

1. Hours Worked.

Employers must pay covered employees for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, on the employer's premises, or at any other prescribed place of work. Also included is any additional time the employee is "suffered or permitted" to work. For example, an employee may voluntarily continue to work at the end of the shift. The employee may be a clerical worker who wants to finish an assigned task or correct errors; or a piecework employee may choose to remain and finish a unit or complete a roof due to changes in weather; a bookkeeper may want to remain and post work tickets, prepare time reports, or other records. The reason for the continued work at the end of the shift is immaterial. If the employer knows or has reason to believe that the work is continuing, the employer must count the additional time as working time. Paid sick leave and other forms of paid time off used during a workweek are not hours

worked and are not required to be counted in the overtime calculation. For more information on "hours worked," *see* Administrative Policy ES.C.2, "Hours Worked."

2. Calculating Overtime Pay.

The Washington State overtime law, RCW 49.46.130, requires overtime compensation be paid at a rate of at least 1.5 times the employee's "regular rate" for each hour worked in a workweek in excess of 40 hours. Generally, the regular rate for an employee paid anything other than a single hourly rate includes all payments made by the employer to, or on the behalf of, the employee (excluding certain exceptions), and is determined by dividing the total compensation for an employee in any workweek by the total number of hours worked in the workweek for which such compensation was paid.

Employers must keep an accurate record of daily hours worked in order to calculate the regular rate.

In no case may the regular rate be less than the minimum wage rate required by the Minimum Wage Act.

3. Hourly Rate.

If the employer compensates the employee solely at a single, hourly rate, the hourly rate is the "regular rate." If the employee works more than 40 hours in the workweek, the employer must pay the employee at least 1.5 times the **regular rate** for each hour worked over 40. The hourly rate **will not** be the regular rate if the employee earns any additional compensation or incentive pay during the workweek.

EXAMPLE 3-1: An employee paid $20.00 an hour works 44 hours in a workweek. The employee is entitled to at least 1.5 times $20.00, or $30.00, for each hour over 40. Pay for the week should be $800.00 for the first 40 hours of work, plus $120.00 (4 hours x $30.00), for the four hours of overtime; a total of $920.00.

HOURS WORKED EACH DAY						
Sun	**Mon**	**Tue**	**Wed**	**Thu**	**Fri**	**Sat**
31-Jan	1-Feb	2-Feb	3-Feb	4-Feb	5-Feb	6-Feb
off	8	8	8	8	8	4

Single, Hourly Rate = $20.00				**OVERTIME OWED**
Hours Worked	**Hourly Rate**	**Unpaid OT Hrs**	**OT Rate (1-1/2 Hourly Rate)**	
44	$20.00	4	$30.00	**$120.00**

EXAMPLE 3-2: An employee paid $20.00 an hour works 44 hours in a workweek. The employer pays the employee an additional $200.00 for the week as a bonus, representing 10% of profits. The straight time earnings for the week are $1080.00 (44 hours x $20.00 = $880.00 + $200.00 bonus). The weekly earnings ($1080.00) divided by the actual hours worked (44) reflects a $24.55 per hour regular rate of pay for that week. Since the $1080.00 is the total straight time pay for all 44 hours, all that is owed for the overtime is the half-time rate of $12.28 ($24.55 divided by 2), times four hours, or $49.12. The total wages, including overtime, owed for that particular week would therefore be $1129.12.

HOURS WORKED EACH DAY						
Sun	**Mon**	**Tue**	**Wed**	**Thu**	**Fri**	**Sat**
31-Jan	1-Feb	2-Feb	3-Feb	4-Feb	5-Feb	6-Feb
off	8	8	8	8	8	4

$20.00 Hourly Rate + $200.00 Weekly Bonus = $24.55 Reg Rate ÷ 2 = $12.28 OT Rate									**OVERTIME OWED**
Hours Worked	**Hourly Rate**	**Straight Time Earn**	**Weekly Bonus**	**Weekly Earn Ttl**	**Ttl Hrs Worked**	**Regular Rate**	**OT Rate (1/2 Hrly Rate)**	**Unpaid OT**	
44 x	$20.00	= $880.00 +	$200 =	$1080.00	÷ 44 =	$24.55 ÷ 2 =	$12.28 x	4 =	**$49.12**

4. Working at Two or More Hourly Rates.

When an employee works at two or more different rates of pay within a single workweek, the regular rate for that week is the **weighted average** of such rates. That is, the total earnings are calculated to include the compensation during the workweek from all of the rates of pay, and are then divided by the total number of hours worked at all jobs in that workweek.

EXAMPLE 4-1: An employee works 45 hours in a workweek and is paid $20.00 an hour for 5 hours and $30.00 an hour for 40 hours. The straight time earnings for the week are $1300.00 (5 hours x $20.00 = $100.00 + $30.00 x 40 = $1200.00; a total of $1300.00). The weekly earnings ($1300.00) divided by the actual hours worked (45) reflects a $28.89 per hour regular rate of pay for that week. Since the $1300.00 is the total straight time pay for all 45 hours, all that is owed for the overtime is the half-time rate of $14.45 ($28.89 divided by 2), times five hours, or $72.25. The total wages, including overtime, owed for that week would therefore be $1372.25.

HOURS WORKED EACH DAY						
Sun	**Mon**	**Tue**	**Wed**	**Thu**	**Fri**	**Sat**
31-Jan	1-Feb	2-Feb	3-Feb	4-Feb	5-Feb	6-Feb
off	10	5	12	10	8	off

5 hours x $20.00 = $100.00 + 40 hours x $30.00 = $1200.00 = Weekly Total $1300.00								**OVERTIME OWED**
Hours Worked	**Hourly Rate #1**	**Hourly Rate #2**	**Weekly Earn Ttl**	**Total Hrs Worked**	**Regular Rate**	**OT Rate (1/2 Hrly Rate)**	**Unpaid OT**	
45	$20.00 x 5 +	$30.00 x 40 =	$1300.00 ÷	45 =	$28.89 ÷ 2 =	$14.45 x	5 =	**$72.25**

5. Salaries.

The regular rate for an employee paid a salary for a **specified number of hours per week** is calculated by dividing the salary by the number of hours for which the salary is intended to compensate. A salary usually covers up to 40 hours per week, unless the employer and employee clearly and mutually agree that the salary intends to cover a different number of hours.

If the agreement is for up to 40 hours per week, the employee is due the full salary plus time and one-half the regular rate for each hour worked over 40. If the agreed-upon hours are greater than 40 hours per week and the employee works in excess of the agreed-upon hours, time and one-half the regular rate is due for the additional hours above the agreed number. If an employer and employee fail to establish or agree on a specified number of hours per week for which the salary is intended to compensate the worker, it is assumed that the salary is based upon a 40-hour workweek and, thus, 1.5 times the worker's regular rate will be due for all hours worked in excess of 40 in each workweek.

If certain conditions are met, an employment agreement may allow a salary to include **hours that fluctuate each week.** The salary must still be sufficient to meet the minimum wage for every hour worked in that workweek.

Hours worked under a fluctuating workweek salary are considered paid at straight time for whatever number of hours are worked in a workweek. Thus, the regular rate is calculated by dividing the salary by the number of hours actually worked each week. After arriving at the figure, the employer must pay *one-half* times the regular rate for each hour worked over 40, in addition to paying the base salary. Since the salary pays the straight time for all of the hours worked, it is only the remaining "one-half" portion of paying time-and-one-half that is still due in such instances. This one-half time overtime payment method is only available if **all** of the following conditions are met:

1. There is a clear and mutual understanding between the employer and the employee that the salary is straight pay for all hours worked in the week;
2. There is a clear and mutual understanding between the employer and the employee that overtime will be compensated at one-half times the regular hourly rate; and
3. The overtime is paid contemporaneously with straight-time pay. Contemporaneous means that the overtime pay is received in the same pay period as the regular pay.

EXAMPLE 5-1: To illustrate such fluctuating hours for salaried employees, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid $1000.00 a week for whatever number of hours of work are required. Under this pay agreement, an employee who works 50 hours during the week has a regular rate of $20.00 per hour ($1000.00 divided by 50 hours). In addition to the salary, 1/2 the regular rate, or $10.00, is due for each of the 10 overtime hours—a total of $1100.00 for the week. If the employee worked 54 hours, the regular rate would be $18.52 ($1000.00 divided by 54 hours). In that case, an additional $9.26 ($18.52 divided by 2) is due for each of the overtime hours—a total of $1129.64 for the week ($9.26 x 14 hours = $129.64 + $1000.00 = $1129.64).

HOURS WORKED EACH DAY						
Sun	**Mon**	**Tue**	**Wed**	**Thu**	**Fri**	**Sat**
31-Jan	1-Feb	2-Feb	3-Feb	4-Feb	5-Feb	6-Feb
off	10	10	10	10	10	4

Weekly Salary = $1,000.00				**OVERTIME OWED (OT Hours x OT Rate)**
Hours Worked	**Hourly Rate**	**OT Hrs**	**OT Rate (1/2 Hourly Rate)**	
54	$18.52	14	$9.26	**$129.64**

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to calculate the regular rate and overtime. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks for the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

6. Piece Rate.

Piece rate employees are usually paid a fixed amount per unit of work. The regular rate of pay for an employee paid on a piece-rate basis is essentially identical to that of a commissioned employee, and is obtained by dividing the total weekly earnings by the total number of hours worked in the same week. The employee is entitled to an additional 1/2 times this regular rate for each hour worked over 40, besides the full piece rate earnings.

EXAMPLE 6-1: The following is an example of a piece rate employee who earned $1000.00 in piecework, but took 50 hours to earn the wages during a workweek.

HOURS WORKED EACH DAY						
Sun	**Mon**	**Tue**	**Wed**	**Thu**	**Fri**	**Sat**
31-Jan	1-Feb	2-Feb	3-Feb	4-Feb	5-Feb	6-Feb
off	10	10	10	10	10	off

Piece Rate Earned = $1,000.00				**OVERTIME**
Hours Worked	**Hourly Rate**	**Unpaid OT Hrs**	**OT Rate (1/2 Hourly Rate)**	
50	$20.00	10	$10.00	**$100.00**

Another way to compensate piecework for overtime, if agreed before the work is performed, is 1.5 times the piece rate for each piece produced during the overtime hours. The piece rate must be the one actually paid during non-overtime hours and must be enough to yield at least the minimum wage per hour.

7. Flat Rate.

Flat rate (or task basis) employees are paid according to a pre-set rate for a particular task. The most common application of this type of pay is a mechanic who receives a flat hourly rate to perform a repair. For example, a power steering pump replacement might be a task that is “pre-set” to take 2 hours to complete. The flat rate mechanic would be paid 2 hours of pay for that task whether it took 1, 2, or 3 hours to finish. The “regular rate” for a flat rate employee is calculated essentially the same way as a commissioned or piece rate employee, dividing total earnings for the week by the hours worked during the week. It is important that an accurate record of actual hours worked be kept, along with the flat rate hours, so that the regular rate can be calculated.

EXAMPLE 7-1: Here is an example of a flat rate employee who earned $800.00 during a week, but actually worked 45 hours to earn it:

	HOURS WORKED EACH DAY						
	Sun	**Mon**	**Tue**	**Wed**	**Thu**	**Fri**	**Sat**
	31-Jan	1-Feb	2-Feb	3-Feb	4-Feb	5-Feb	6-Feb
Flat Rate Hrs	off	8	8	8	8	8	off
Actual Hrs	off	9	9	9	9	9	off

	Flat Rate Earned = $800.00				OVERTIME OWED (OT Hrs x OT Rate)
	Hours Worked	**Hourly Rate**	**Unpaid OT Hrs**	**OT Rate (1/2 Hourly Rate)**	
Flat Rate Hrs	40	$20.00	N/A	N/A	**N/A**
Actual Hrs	45	$17.78	5	$8.89	**$44.45**

8. Paid Sick Leave and Other Paid Time Off.

If an employee uses paid sick leave during a workweek, the paid sick leave used during the workweek is not considered "hours worked" and does not have to be counted towards the 40-hour overtime threshold or in the overtime wages calculation. An employer must compensate each employee for paid sick leave used at the employee's normal hourly compensation. *See* WAC 296-128-600(10). Other forms of paid time off including vacation pay, holiday pay, or "PTO" are also not considered hours worked and are not counted towards the 40-hour overtime threshold. The calculation of regular rate for overtime purposes is based on actual hours worked, and does not have to include hours for which the employee used paid sick leave or other paid time off.

EXAMPLE 8-1: An employee paid $20.00 an hour works 44 hours in a workweek and uses paid sick leave for 8 hours, for a total of 52 reported hours. The employee is entitled to at least 1.5 times the regular rate, or $30.00, for each hour over 40 hours worked. Pay for the week should be $800.00 for the first 40 hours of work, plus $120.00 (4 hours x $30.00), for the four hours of overtime for a total of $920.00. The paid sick leave hours are not included in the hours worked or in calculating the regular rate.

	HOURS WORKED EACH DAY						
	Sun	**Mon**	**Tue**	**Wed**	**Thu**	**Fri**	**Sat**
	31-Jan	1-Feb	2-Feb	3-Feb	4-Feb	5-Feb	6-Feb
Hours Worked	-	10	8	-	8	8	10
Paid Sick Leave	-	-	-	8	-	-	-

	Hourly Rate = $20.00				OVERTIME OWED (OT Hrs x OT Rate)
	Hours	**Hourly Rate**	**Unpaid OT Hrs**	**OT Rate (1-1/2 Hourly Rate)**	
Hours Worked	44	$20.00	4	$30.00	**$120.00**
Paid Sick Leave	8	$20.00	-	-	**-**