

## Do You Have to Pay Overtime?

by Quenda Behler Story

I'm going to go out on a limb and say you're running behind on your work schedule. How do I know? Because of Murphy's Law: Anything that can go wrong will.

So you're trying to figure out how you're going to manage all these extra, unbudgeted, labor hours. One question is, Do you have to pay overtime? Also, is there some way you could spread those labor costs out instead of paying them all at once?

### State and Federal Requirements

Your state may require you to pay overtime. In Michigan, employees who are paid on an hourly basis must receive time and half for hours worked over 40 hours a week. (There are other formulas for employees who work odd shifts, such as three days a week, but we're not concerned about those in this column.)

Most other states have similar fair labor laws regulating both minimum wages and employee overtime. A few states don't. But even in those states, employers may have to pay overtime if they're working on a federal project, such as a new roof for the local post office, or maybe a project that's being built with federal dollars — a federal economic opportunity grant, for example.

The federal standards are not important here in Michigan, because our wage and overtime laws are mostly more stringent than the federal standards. If you're subject to both, you must pay the higher rate. But the federal requirements could be very important in states with weaker employee protection laws, or none at all, because in those states, the federal standards could make your labor costs higher.

**Don't panic.** Except for what I've mentioned, and a couple of other

franchising exceptions, however, construction work as a general rule is not covered by the federal laws, because it rarely involves doing business across state lines.

### Who's Exempt?

Even if you are covered by state or federal overtime laws, as a general rule, salaried employees are not entitled to time and a half overtime pay. Salaried workers usually include clerical staff, estimators, and supervisory personnel. They are paid a certain, specific amount of money each pay period, whether they work 35 hours or 65 hours a week.

Of course, you don't have to pay those people a flat salary. You can pay them by the hour if you choose to, but if you do and you're in a state with overtime laws or working on a federal project, those people will be entitled to overtime pay when they work extra hours. It's not the job title but the pay structure that makes the difference.

**Independent contractors.** Nor, of course, do you have to pay overtime to independent contractors. They are not your employees, salaried or otherwise.

I'm sure most of you know that the solution to your overtime problems is not simply to reclassify everybody on your payroll as an independent contractor. Tempting though the thought might be at times, the federal and state regulators have specific standards to determine who is and who is not an independent contractor. They also have some nasty penalties for cheaters.

### Substituting Compensation Time

You may think you see another solution. Say hunting season is coming up, and half your crew will call in

sick that week anyway. The other half doesn't bother lying to you. Can you say to them, "Okay, instead of paying you overtime, I'm going to let you bank your overtime as paid hours off, so that when you go hunting, you can still get paid"?


In Michigan, you can offer that option and they don't even have to go hunting; they can do whatever they want with their comp time. What you cannot do in Michigan, or perhaps anywhere, is *force* your employees to take compensation time instead of extra pay. If they're entitled to overtime pay and don't want to take comp time instead, they don't have to. They can claim the overtime pay.

But is there any advantage to you in offering comp time? Yes, sometimes there is. Substituting comp time for immediate overtime allows you to spread out your labor costs. When cash flow gets tight, you may be able to get out of trouble by delaying some expenses.

If you do get into a comp time arrangement, most state laws require

you to report those accumulated compensation hours in the same way you report wages and withholding.

**Written statement.** In Michigan, not only can you not require an employee to take comp time instead of overtime pay, you also must get written consent from the employee saying that he or she chooses to take the comp time instead of the extra pay.

**More than the law requires.** Remember that I'm talking about what the law *requires* you to do. You may have a different bargaining arrangement with your employees — you can always agree to give them more than what the law requires (or your employees can force you to give them more). You cannot, however, make an agreement with your employees that gives them less than the law allows. 

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