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OC Register Q&A - Daily Overtime

Q. I have a question regarding what is actual overtime and OT pay rate. My workweek starts on Sunday and ends on Saturday. The job requires many days at 12-16 hours per day, including Saturday and Sunday but not always 40 hours per seven-day week. In busy times, a 70-hour week for me is not uncommon, including Saturday and Sunday work time. I make my own schedule and work from my home without direct supervision. I do provide my supervisor with itineraries so the office knows of my schedule and workload prior to the work being performed.

I am only paid overtime, and always at 1 1/2 times my hourly rate, when my seven-day work week exceeded 40 total hours. Does the employer have to pay the OT rate for days over 8 hours, or a higher rate for Saturday and/or Sunday work? If so, is this retroactive back to when I started in 2000?

A. The "Eight-Hour Day Restoration and Workplace Flexibility Act of 1999," was enacted into law on January 1, 2000. This law re-enacted the mandate that nonexempt California employees be paid overtime for any work performed in excess of eight hours in any given work day, regardless of the total hours the employee works during the week.

The law provides that nonexempt employees must be paid overtime for work performed in excess of 8 hours in any one work day; for work performed in excess of 40 hours in any one work week; and for work performed on the 7th day, when the employee works all 7 days. Employees must be paid at a rate of no less than 1.5 times their regular rate of pay for all work performed between 8 and 12 hours in any given work day and for the first 8 hours worked on the 7th day of any work week. Any work in excess of 12 hours in one day and any work over 8 hours on any 7th day of a work week must be paid at a rate of at least twice the employee's regular rate of pay.

The Labor Commissioner's Office may award civil penalties and back pay to employees whose employers have failed to pay them overtime wages. A penalty may be imposed against an employer or other person acting on behalf of his/her employer for each employee not receiving overtime wages for each pay period that employee has been underpaid. A first-time violator may be penalized \$50.00 per employee pay period. The penalty will increase to \$100.00 per employee pay period for any subsequent violations.

- Written by Audrienne Adams