



# Overtime

There are federal and state overtime laws. They are the Federal Fair Labor Standards Act (FLSA) and the Minnesota FLSA. Whichever law gives you the most benefits is what you use. In most cases, the federal law is stricter than the state law and applies to most employees, so it controls decisions. Federal law requires overtime after fewer hours worked. For more information on which employees are covered by the federal law, see the federal Department of Labor’s Fact Sheet #14 at [www.dol.gov/whd](http://www.dol.gov/whd).

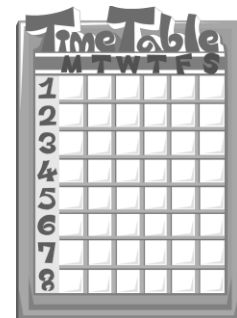
If you are eligible to get overtime pay by law, it is illegal for an employer to try to work out a deal with you to not pay. It doesn’t matter if you work full-time or part-time. An employer has to pay overtime to an employee, unless the employer can show that the employee is “exempt” from the law. Most employees do not fall under any exemption and are referred to as “non-exempt” employees. Non-exempt employees should be paid on an hourly basis and for all overtime. For more information on who is “exempt” vs. “non-exempt,” see our fact sheet [Job Status and Your Rights](#).

It is always a good idea to keep track of your hours on your own. Write down when you start and stop work each day. Keep this record in a safe place.

## Federal and State Law Requirements

The federal Fair Labor Standards Act (FLSA) requires that most employers pay overtime for hours worked over 40 in a workweek. The workweek is set by the employer. It is usually Sunday-Saturday each week or some similar weekly period.

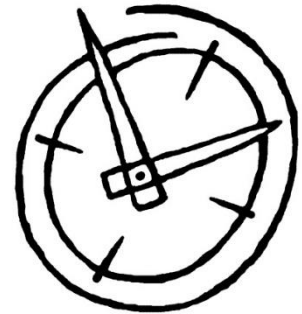
The Minnesota FLSA requires that employers pay overtime for hours worked over 48 in a workweek. This requirement applies only if your employer or you do not fall under the federal law.



## What are some rules about hours of work and overtime pay?

- Overtime is figured out on a workweek basis. It is not figured daily. So if you work over 8 hours one day but you still don’t work over 40 hours for the workweek, you don’t get overtime for the long day.
- Work hours can’t be averaged over a pay period - usually 2 weeks. In other words, your employer can’t have you work 50 hours one week and then only 30 the next to avoid overtime pay. You have to be paid overtime for the 10 overtime hours in the first week.

- The work week can be any period of 7 days in a row. It is set by the employer. It can't be changed unless the change is permanent.  
**Note:** The rules may be different if you work in a health care facility. The work week may be set differently using an "8/80" schedule.
- If you work more than one job for the same employer, you add together all your hours for both jobs when you are counting toward overtime.
- Only hours that you actually work count towards overtime. Holiday, vacation and sick time do not count as hours worked.
- Your employer decides if you have to work overtime. You could be disciplined or lose your job if you say no.
- Many employers want you to get the ok from them before putting in overtime. Before you work extra hours, check with your supervisor to make sure it is ok.



If you work overtime and did NOT get the ok from your supervisor, your employer still has to pay you even if you didn't follow the rules. But remember, you can be disciplined for not getting the ok and that could cause problems. It is always best to follow the work rules and ask about overtime if that is one of the rules.

- You should never work "off the clock." That means whenever you are working make sure you are punched in, so you are paid for the work you are doing.
- If you have a disability, you can ask for changes to any mandatory overtime. This is called a reasonable accommodation.

### **How do I know if I can get overtime pay?**

Getting paid overtime depends on if you are an "exempt" or "non-exempt" employee. Whether you are paid hourly or get a salary does not always matter, but non-exempt employees are usually paid hourly. Ask your employer if you are not sure which you are.

Examples of jobs that are "exempt" from overtime pay if the employee meets the legal definition of the exemption:

- Executive, administrative or professional employees who get a salary. A salary is a pre-set amount of money that you get paid weekly. It is not hourly.
- Some retail or service employees paid on commission basis.
- An outside salesperson.
- Some vehicle dealership employees who sell or service vehicles and are paid on a commission or incentive basis.
- Some agricultural workers.

## What is the overtime rate of pay?

Overtime pay is at least “time and a half.” This means your regular pay plus another half of your regular pay rate. If you make \$20 an hour, any hours you work over 40 in a week is paid at \$30 an hour, or time and a half.

In general, your overtime rate must be based on all of the kinds of payments you get, not just your hourly rate. For example, commissions, pay adjusted off regular hour shifts, and most bonuses must be included in your overtime rate.



## Can I ask for overtime pay they should have paid me in the past?

Yes. But the maximum amount of overtime you can claim usually goes back 2 years. In some cases, if it can be proved your employer cheated on purpose, it might be 3 years.

## What if I have questions?

You should contact one of the agencies below or an employment lawyer.

Minnesota Department of Labor and Industry Labor Standards

[www.doli.state.mn.us](http://www.doli.state.mn.us)

Phone: (651) 284-5005 or 1-800-DIAL-DLI (1-800-342-5354)

Federal Wage and Hour Division, U.S. Department of Labor

[www.dol.gov/whd](http://www.dol.gov/whd)

Phone: 1-866-4USWAGE (1-866-487-9243)

**Fact Sheets are legal information NOT legal advice. See a lawyer for advice.**

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