



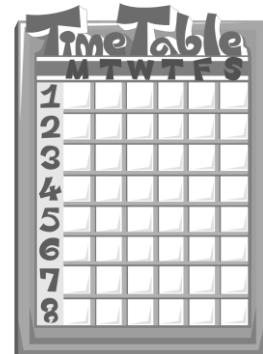
# Overtime

## Are there laws about working overtime?

There are both federal and state overtime laws. They are the Federal Fair Labor Standards Act (FLSA) and the Minnesota FLSA. The federal law allows for overtime pay based on fewer hours worked and applies to more employees than the state law. If there is a conflict between the laws, and both apply to an employee, federal law controls in most cases. For information on which employees are covered by the federal law (FLSA), see the federal Department of Labor’s [Fact Sheet #14](#) at [www.dol.gov/whd](http://www.dol.gov/whd) under “Resources.”

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 you overtime. It doesn’t matter if you work full-time or part-time. An employer has to pay overtime to an employee, unless they 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 paid for all time they work 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 most employers to pay overtime to employees who work more than 40 hours in a workweek. The workweek is set by the employer. It is usually Sunday-Saturday each week or some similar weekly (168 hours) period.

**The Minnesota FLSA** requires that employers pay overtime to employees who work more than 48 hours in a workweek. Minnesota law applies only if your employer or you do not qualify for overtime based on the federal law.

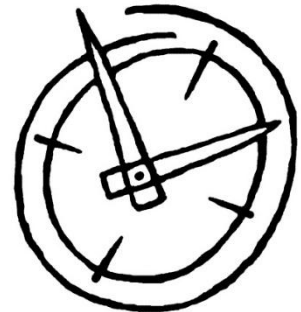
## What are some rules about hours of work and overtime pay?

- Overtime is figured out on a workweek basis. It is not figured daily. So, if you work over 8 hours one day but don’t work over 40 hours during the workweek, you don’t get overtime for the long day.

- Work hours can't be averaged over a pay period. If you are paid every 2 weeks 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.
- A work week can be any period of 7 days in a row. When it starts and when it ends 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 using an "8/80" schedule. For these workers this can mean overtime pay for more than 8 hours work during a single day, or more than 80 hours during a 14-day period. The employer has the right to decide if they want to pay overtime based on this type of schedule.

- If you work more than one job for the same employer, you add together all your hours for both jobs to figure out if you have worked any overtime.
- Only hours that you do 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 an 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 do NOT get an 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 an 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.

- **Never work "off the clock."** That means whenever you are working make sure you are punched in or report your hours, 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.

- If you work for a business that has at least 2 employees and annual sales or business revenue totaling \$500,000 or more, you usually must be paid overtime.

- If you work for a hospital or a business that provides medical or nursing care for residents, you usually must be paid overtime.
- If you work for a school, preschool or government agency, you usually must be paid overtime.
- If you work in interstate commerce (businesses whose goods or services affect commerce between or among states), you usually must be paid overtime.
- If you are a domestic service worker (housekeeper, childcare provider, cook), you usually must be paid overtime.

### **You won't qualify for overtime pay if you are "exempt"**

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

- Executive, administrative, computer, 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. Usually, such employees must be paid at least \$844 per week (\$21.10 per hour).
- 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. **Note:** agricultural workers can't usually get overtime under the federal FLSA. That is overtime after **40** hours per week. But, most agricultural workers can get overtime under the Minnesota FLSA. That is overtime after **48** hours per week.

### **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. Overtime can be more than time and a half. It depends on the employer.

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 get fired for reporting overtime problems?**

NO. Your employer can't "retaliate" against you if you report violations of the FLSA. They also can't retaliate if you help in an investigation of violations of the FLSA. Retaliation can be things like firing you, demoting you, not re-hiring you etc.

### **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.dli.mn.gov](http://www.dli.mn.gov)

Phone: [\(651\) 284-5005](tel:6512845005) or [1-800-DIAL-DLI \(1-800-342-5354\)](tel:1800DIALDLI)

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

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

Phone: [1-866-4USWAGE \(1-866-487-9243\)](tel:18664USWAGE)

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