



Pennsylvania Court Rejects Fluctuating Workweek Method of Calculating of Overtime

Insights

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Last month, the Pennsylvania Superior Court weighed in on its position regarding overtime calculation under the “fluctuating workweek” method. The Court affirmed that the use of this method to determine the amount of overtime owed violates the Pennsylvania Minimum Wage Act (PMWA), even though this method is permitted under the Fair Labor Standards Act (FLSA). This dichotomy is sure to raise questions for Pennsylvania employers paying non-exempt employees a weekly salary.

Under the fluctuating workweek method, employees who are entitled to overtime pay receive a fixed weekly salary, which is divided by the actual number of hours an employee worked in the week to determine the week’s base hourly rate. The employees will then receive an additional 0.5 times their base rate for each hour worked beyond 40 in the workweek, as they have already been paid base pay for all hours worked, including those over 40. Thus, only the half time portion of overtime is due. This method requires an understanding with the employee that the fixed salary will compensate the employee for all their hours each week on a straight-time basis and also requires that the employee receive that same salary, even if their hours fall below 40 in a given week.

In *Chevalier v. General Nutrition Centers*, the Pennsylvania Superior Court rejected this method under the PMWA, finding that it is not supported by the statute and its regulations. Unlike the FLSA, the PMWA specifically requires Pennsylvania employer to pay “**not less than 1½ times** the employee’s regular rate of pay for all hours in excess of 40 hours in a workweek.”

However, the court found that the PMWA does allow the regular rate to be calculated consistent with the fluctuating workweek method. That is, employers can calculate the regular rate by dividing the number of hours worked in a given week into the weekly salary rather than always dividing the weekly salary by 40 hours to calculate a regular rate. As a result, an employee can continue to have a regular rate that fluctuates each week, but any hours over 40 must be paid at 1.5 times that hourly rate rather than .5 times the rate.

The result translates to higher overtime costs for Pennsylvania employers using a weekly salary for non-exempt employees. By way of example, consider an employee earning \$1,000 per week who works 50 hours in one week. When using the fluctuating workweek method, the employee’s weekly salary would be divided by hours worked (1000/50) to confirm a weekly hourly rate of \$20 per hour.

The employer would then pay the hours worked over 40, 10 in this case, at a rate of \$10 per hour, or .5 times the \$20 hourly rate. This would equate to \$100 in overtime pay.

In light of the *Chevalier v. General Nutrition Centers* ruling, however, the employee would be entitled to 1.5 times the \$20 hourly rate (\$30) for the 10 hours over 40, which would result in \$300 in overtime pay. This is a drastic difference of which Pennsylvania employers must be made aware, as the PMWA provides for back pay, liquidated damages and attorneys' fees if an employer is noncompliant.

Should you need any assistance in revising your pay practices, please reach out to your Fisher Phillips attorney.

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