

Fluctuating Overtime with Hours

The impending increase in the minimum salary for the executive, administrative, and professional exemptions under the FLSA has many employers looking for ways to manage overtime costs for newly-reclassified employees. As part of that search, you might have heard of this idea called the "fluctuating" method for calculating overtime as one alternative that can yield major savings. So what is this method, and how does it work?

Under the FLSA, employers are free to pay non-exempt employees a flat salary, as long as that salary is sufficient to provide employees at least the minimum wage for all hours worked every workweek, and so long as employers pay overtime at 1.5 times the employee's "regular rate" of pay for all hours worked in excess of 40 in a single workweek.

Fluctuating workweek overtime is legal as long as the following conditions are met:

- 1) The employee must be on a guaranteed weekly salary which is paid to the employee as long as the employee performs any work in the workweek. No pay is required for a workweek in which the employee is out for the entire workweek and performs no work in that workweek.
- 2) Pay periods can still be bi-weekly, semi-monthly, or monthly; but the work hours have to be computed weekly to determine the hours worked each workweek. For this reason, we suggest that pay periods be either weekly or bi-weekly when an employee is on a fluctuating workweek overtime pay schedule so the pay periods will correspond with each workweek.
- 3) The hours of the employee must fluctuate from workweek to workweek. However, there are no rules as to how much or how little the hours must fluctuate from workweek to workweek.
- 4) The regular hourly rate of pay which is used to base the half time overtime rate must be at least the minimum wage which is currently \$7.25 in North Carolina.

Here's how it works: Let's say an employee's guaranteed salary is \$400.00 a week and the employee works 50 hours one workweek. The employer is to divide the \$400.00 guaranteed weekly salary by 50 hours to get the regular hourly rate of pay for that workweek which computes out to be \$8.00 an hour. In this example, the employee actually earned \$8.00 an hour straight time rate for all the hours including the hours worked in excess of 40. Now the employer owes the employee the half time rate for the hours worked in excess of 40. In this example, it is for 10 hours. Please note that the overtime rate is a "time and a half rate" and the employee in this example has already received the "time rate" and is now due the "half rate" for the overtime hours worked in excess of 40. To do this, the employer is to divide the \$8.00 rate in half which computes to \$4.00 an hour for the "half rate" which is then multiplied by the 10 overtime hours which computes to \$40.00 [$\$4.00 \text{ an hour} \times 10 \text{ hours} = \40.00]. The employee is due an additional \$40.00 gross for the 10 hours overtime worked in the workweek. In this example, the employee is due a total gross pay of \$440.00 for all of the hours worked in the workweek for both the straight time hours and the overtime hours [$\$400.00 + \$40.00 = \$440.00$].

The more hours worked in a workweek, the less the regular hourly rate of pay will be. The regular rate can go all the way down to the minimum wage, but that is it. Therefore, using the example of a guaranteed salary of \$400.00 a week, the most the employee could work in a workweek under the fluctuating workweek overtime method for this example is 55 hours [$\$400.00 \text{ divided by } \$7.25 \text{ an hour} = 55.17 \text{ hours}$]. The overtime half time pay cannot be a part of the \$400.00 salary that is for the total straight time pay for all of the hours including the "straight time" pay for the hours over 40. The employee is still getting time and a half pay for the hours worked in excess of 40 in a workweek. Overtime hours are based on each individual workweek [each workweek stands on its own] and not by pay period or by month or by any other period of time. Therefore, an employer cannot base the

overtime hours on the total hours worked in a bi-weekly or a semi-monthly pay period. To determine the number of overtime hours and for the calculation of overtime hours, each workweek stands on its own.

MITC Payroll Rules Engine supports multiple ways of calculating fluctuating overtime in compliance with DOL rules.

3 examples follow with detailed illustration.

For example, MITC supports situations where employees are paid both salary AND hourly rates.

Fluctuating Overtime with Hours Procedure

- Used to calculate weighted overtime for:
 - Salaried employees who track their attendance
 - Employees who are paid both hourly rates and flat amounts (Ex. Stipend, Flat amount per job or visit, etc.)
- Calculates each week separately
- Works with semi-monthly pay period in addition to weekly and bi-weekly periods
- Creates new timecard with OT hours, weighted OT premium (1/2 rate)
- Calculations:
 - $\text{Overtime Hours} = \text{Hours Worked} - 40$
 - $\text{Gross Pay} = (\text{Hours} * \text{Rate}) + \text{Flat Amount}$
 - $\text{Weighted Hourly Rate} = \text{Gross Pay} / \text{Hours Worked}$
 - $\text{Overtime Half Rate} = \text{Weighted Hourly Rate} * 0.50$

Example 1: Salaried Employees

- Employee weekly salary = \$750
- Employee works 50 hours
- Weighted rate = $\$750.00 / 50 \text{ Hours} = \15.00
- Overtime half rate = $\$15.00 * 0.5 = \7.5 (Full Overtime Rate = \$22.50)
- New Overtime Timecard
 - Job = Home Job
 - Date = Last date of week
 - 10 hours
 - Rate = \$7.50
 - Pay Type O
 - Home Department

Edit Timecards		Change by Employee				Change by Job						
Select an Employee: Padilla, Tracy		1029		Total Hours	50.00	Weekly Strd Hrs	0.00	Variance	50.00			
				Total Pay	750.00							
Job	Work Date	Start	End	Pay Hrs	Pay Rate	Amount	Expenses	Pay Type	BC	WC	Dpt	Co
Administration	08/03/2016	08:00	18:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/04/2016	08:00	18:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/05/2016	08:00	18:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/06/2016	08:00	18:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/07/2016	08:00	18:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/08/2016				0.0000	750.00	0.00	Salary			200	
				Total Amount		750.00						

Edit Timecards Change by Employee Change by Job

Select an Employee: Padilla, Tracy 1029

Actual **Weekly Strd Hrs** **Variance**
 Total Hours 60.00 0.00 60.00
 Total Pay 825.00

Click Here to Delete Record Size A A A

Job	Work Date	Start	End	Pay Hrs	Pay Rate	Amount	Expenses	Pay Type	BC	WC	Dpt	Coj
Administration	08/03/2016	08:00	18:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/04/2016	08:00	18:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/05/2016	08:00	18:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/06/2016	08:00	18:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/07/2016	08:00	18:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/08/2016	:	:	:	0.0000	750.00	0.00	Salary			200	
Administration	08/09/2016	:	:	10.00	7.5000	0.00	0.00	Overtime			200	

Total Amount 750.00

Clear All Change All Pay Type Summary
 Hours Pay Rates Summary by Job
 Hours for Date... Pay Types Unapprove Append Record Refresh PTO Balances

Example 2: Salaried Employees

- Employee weekly salary = \$750
- Employee works 60 hours
- Weighted rate = \$750.00 / 60 Hours = \$12.50
- Overtime half rate = \$12.50*0.5 = \$6.25 (Full Overtime Rate = \$18.75)

Edit Timecards | Change by Employee | Change by Job

Select an Employee: Rogers, Steve
1013

	Actual	Weekly Strd Hrs	Variance
Total Hours	60.00	80.00	-20.00
Total Pay	750.00		

Job	Work Date	Start	End	Pay Hrs	Pay Rate	Amount	Expenses	Pay Type	BC	WC	Dpt	Co
Administration	08/03/2016			0.00	0.0000	750.00	0.00	Salary	R		200	
Administration	08/03/2016	09:00	19:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/03/2016	09:00	20:00	11.00	0.0000	0.00	0.00	Regular			200	
Administration	08/04/2016	09:00	20:00	11.00	0.0000	0.00	0.00	Regular			200	
Administration	08/05/2016	08:00	20:00	12.00	0.0000	0.00	0.00	Regular			200	
Administration	08/06/2016	08:30	20:00	11.50	0.0000	0.00	0.00	Regular			200	
Administration	08/07/2016	08:00	12:30	4.50	0.0000	0.00	0.00	Regular			200	

Total Amount: 750.00

Buttons: Clear All, Change All, Hours, Pay Rates, Approve, Hours for Date..., Pay Types, Unapprove, Append Record, Refresh, Pay Type Summary, Summary by Job, PTO Balances

Edit Timecards
Change by Employee
Change by Job

Select an Employee: Rogers, Steve

1013

[Click Here to Delete Record](#) Size A A A

Actual	Weekly Strd Hrs	Variance
Total Hours: 80.00	80.00	0.00
Total Pay: 875.00		

Job	Work Date	Start	End	Pay Hrs	Pay Rate	Amount	Expenses	Pay Type	BC	WC	Dpt	Co
Administration	08/03/2016	:	:	0.00	0.0000	750.00	0.00	Salary	R		200	
Administration	08/03/2016	09:00	19:00	10.00	0.0000	0.00	0.00	Regular			200	
Administration	08/03/2016	09:00	20:00	11.00	0.0000	0.00	0.00	Regular			200	
Administration	08/04/2016	09:00	20:00	11.00	0.0000	0.00	0.00	Regular			200	
Administration	08/05/2016	08:00	20:00	12.00	0.0000	0.00	0.00	Regular			200	
Administration	08/06/2016	08:30	20:00	11.50	0.0000	0.00	0.00	Regular			200	
Administration	08/07/2016	08:00	12:30	4.50	0.0000	0.00	0.00	Regular			200	
Administration	08/09/2016	:	:	20.00	6.2500	0.00	0.00	Overtime			200	

Clear All Change All

Hours Pay Rates Approve

Hours for Date... Pay Types Unapprove

Total Amount 750.00

Append Record Refresh

Pay Type Summary

Summary by Job

PTO Balances

Example 3: Employees Paid a Flat Amount by Job

- Employee works 4 Jobs
 - Job 1: \$200 flat amount
 - Job 2: \$200 flat amount
 - Job 3: \$200 flat amount
 - Job 4: \$200 flat amount
- Employee weekly pay = \$800
- Employee works 50 hours
- Weighted rate = \$800 /50 Hours = \$16.00
- Overtime half rate = \$16.00*0.5 =\$8.00 (Full Overtime Rate = \$24.00)

Edit Timecards												
Change by Employee						Change by Job						
Select an Employee: Sampson, John 6000						Total Hours	Actual: 50.00	Weekly Strd Hrs: 80.00	Variance: -30.00			
						Total Pay	800.00					
Job	Work Date	Start	End	Pay Hrs	Pay Rate	Amount	Expenses	Pay Type	BC	WC	Dpt	Col
Location C	08/03/2016	08:00	18:00	10.00	0.0000	200.00	0.00	Regular			600	
Location B	08/04/2016	08:00	18:00	10.00	0.0000	200.00	0.00	Regular			600	
Location A	08/05/2016	07:00	17:00	10.00	0.0000	200.00	0.00	Regular			600	
Government Contract	08/06/2016	09:00	19:00	10.00	0.0000	100.00	0.00	Regular			600	
Government Contract	08/07/2016	09:00	19:00	10.00	0.0000	100.00	0.00	Regular			600	
						Total Amount	800.00					

Edit Timecards
Change by Employee
Change by Job

Select an Employee: Sampson, John

6000

[Click Here to Delete Record](#) Size A A A

Actual	Weekly Strd Hrs	Variance
Total Hours: 60.00	80.00	-20.00
Total Pay: 880.00		

Job	Work Date	Start	End	Pay Hrs	Pay Rate	Amount	Expenses	Pay Type	BC	WC	Dpt	Col
Location C	08/03/2016	08:00	18:00	10.00	0.0000	200.00	0.00	Regular			600	
Location B	08/04/2016	08:00	18:00	10.00	0.0000	200.00	0.00	Regular			600	
Location A	08/05/2016	07:00	17:00	10.00	0.0000	200.00	0.00	Regular			600	
Government Contract	08/06/2016	09:00	19:00	10.00	0.0000	100.00	0.00	Regular			600	
Government Contract	08/07/2016	09:00	19:00	10.00	0.0000	100.00	0.00	Regular			600	
Location A	08/09/2016	:	:	10.00	8.0000	0.00	0.00	Overtime			600	

Clear All Change All

Hours Pay Rates Approve

Hours for Date... Pay Types Unapprove

Total Amount 800.00

Append Record Refresh

Pay Type Summary

Summary by Job

PTO Balances

