

PERSONNEL NOTEBOOK

For Your Most Important Resource—The Human Resource

Prepared By:

Human Resource Associates

Personnel Consultants

PAYING HOURLY WORKERS A WEEKLY SALARY

Landscape contractors are generally aware of the Federal Labor Standards Act (FLSA) that has, since 1938, required employers to pay non-exempt workers on an hourly basis.

That same act, along with the new “Fair Pay” rules of 2004, also requires that non-exempt (hourly) workers must be paid 1 and ½ times their regular hourly pay rate for all hours worked over 40 in a workweek.

However, Many employers have long ago discovered a little used federal regulation that allows hourly, non-exempt workers, under certain conditions, to be paid a flat weekly salary.

That regulation from the U.S. Department Of Labor (DOL) is 29 CFR 778.114 and is entitled “Fixed Salary For Fluctuating Hours”

What’s The Purpose Of This Regulation?

The regulation, from 1968, is intended to accommodate workers who work variable hours each week. Some weeks may be 25 hours, while other weeks may be 50 hours. For many workers those inconsistent paychecks with some high earning weeks and some low earning weeks, is a great disadvantage. Many would rather be assured a regular weekly salary that they can depend on.

Overtime

Overtime must still be paid for all time worked over 40 hours in the workweek. **But overtime under this arrangement is paid at only half-time (½ time) not time and one half (1 ½ time).**

That may sound a little complicated, but here’s the concept:

By agreeing to a flat weekly salary the employee is already being paid full time for all hours worked that

week. The only thing he hasn't been paid is the ½ time part of the overtime hours. So if the employee works 45 hours in a week, he/she has already been paid full time for all those hours. But he is still due the ½ time pay for the 5 hours overtime.

What Is The Actual Hourly Pay Rate?

Overtime is based on the actual hourly pay rate. If this employee is being paid a weekly salary and working different hours each week, how do you calculate the actual hourly rate for overtime purposes? You determine the actual rate of pay by dividing the agreed weekly salary by the total hours worked that week.

3 Examples:

1. If the weekly salary is \$400 per week and the employee works 44 hours that week, divide \$400 by 44 hours and you get \$9.10 as the actual hourly rate of pay for that week. Overtime is at the ½ of that rate or \$4.55.

So for that week the employee's pay would be:

Weekly Salary.....	\$400.00
4 hours overtime @ \$4.55=	<u>18.20</u>
Total Pay	\$418.20

2. If the weekly salary is \$550 and the individual works 48 hours that week, divide the \$550 by 48 hours and you get \$11.46 as the actual

hourly rate of pay for that week. Overtime is at ½ of that rate or \$5.73.

Weekly Salary	\$550.00
8 hours overtime @ 5.73=	<u>45.84</u>
Total Pay	\$595.84

3. If the weekly salary is \$450 and the individual works 29 hours that week, he is still paid his weekly salary of \$450

Hours Of Work

The total hours of work may fluctuate from week to week and be from 0 hours to whatever hours the job requires.

(Note: In a previous issue of Personnel Notebook, a maximum week of 50 hours was quoted. This was an error. There is no maximum number of hours to which a worker must be limited.)

Time Off

The employee works whatever the schedule calls for. However if the employee takes time off for personal reasons, you may charge that time off to vacation or any other paid time off.

This is stated in the regulations as: The employee will receive this fixed weekly salary-

“for whatever hours he is called upon to work in a workweek, whether few or many”

and:

This agreement requires that- “the employee clearly understands that the salary covers whatever hours the job may demand”

Also note that when the employee takes off for personal reasons, those hours, whether paid or not, are not required to be considered in the calculation of any overtime hours for that week.

What Should Be The Weekly Salary?

Both the employee and the company must agree to the salary. . Although not stated in the regulations, it is highly recommended that you have a written agreement. (See sample at the end of this Personnel Notebook) Whatever the salary agreed to, the result must be an amount that will never be less than the legal minimum wage (currently the federal minimum wage is \$5.15 per hour. Your state may be higher) That is; the weekly salary, when divided by the number of hours worked that week, cannot be less than the legal minimum wage.

So if the employee worked 50 hours at the minimum wage of \$5.15 per hour, his fixed weekly salary must be set at no less than \$257.50 per week. To that you would add 10 hours of overtime at ½ of the pay rate of \$2.58per hour (1/2 of \$5.15 =\$2.58) for a total of:

Weekly Salary	\$257.50
10 hours overtime @ \$2.58=	<u>25.80</u>
Total Pay	\$283.30

You may also want to consider what other workers doing this type of work, and not on this agreement, are earning. Also, what did these workers make doing this work before they were on this agreement.

Note: However you calculate the pay, in a DOL audit, they will examine payroll records to assure that the employee makes more when working overtime than he does when he works straight time and that the difference is at least ½ of the calculated actual hourly rate.

Bill Cook
Human Resource Associates
PLANET employment hotline:
(703) 897-8511
e-mail: hrahtl@consulthra.com

