



## COMPLIANCE CHALLENGES

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# Do the Math!

By Kris Kully

## *It Isn't Fun When Commissions Are Involved, But Here's How to Calculate Overtime for Loan Officers*

**I**t is tough to come to grips with the fact that loan officers—professionals who provide trusted assistance to members about home loans—may have to keep track of their hours, receive at least minimum wage, and get overtime pay for long workweeks. Sometimes it is even tougher to do the math involved!

The federal Fair Labor Standards Act (and many similar state laws) generally require employers to pay employees minimum wage for all hours worked, plus overtime pay for all hours worked over 40 hours in a workweek. Certain exemptions apply, but those exemptions are not as broad as one might think:

- There is an exemption for “administrative” employees, which applies to those who assist with general business operations, but the U.S. Department of Labor believes that exemption does not apply to the typical loan officer.
- There is an exemption for outside salespeople, although that applies only to salespeople who are customarily and regularly engaged away from the employer’s place of business or a home office.

Therefore, a close look at an employee’s actual job duties, and not just titles, is critical to determine whether

the employee qualifies for an exemption. If a loan officer customarily works from an office (either at the credit union’s headquarters, a branch, or a home or other office), it is likely that person should be keeping track of working hours, and may be entitled to overtime pay.

If a loan officer (or other employee) is non-exempt and works longer than 40 hours in a workweek, federal law requires overtime compensation for those extra hours in the amount of at least 1½ times the employee’s “regular rate of pay.” (The state in which the employee works may have different requirements that also must be followed.)

### **DETERMINING ‘REGULAR RATE OF PAY’**

The math is not so hard for employees paid an hourly wage or even a salary. However, if the loan officer receives commissions or guaranteed bonuses,

it can get tricky. “Regular rate of pay” is a calculated figure, derived by considering all the payments made to the employee that are attributable to that overtime workweek, so that rate may change from week to week.

The first step in doing overtime math is to determine the total number of hours the employee worked in a workweek. Under federal law, a workweek is 7 consecutive 24-hour periods. The employer can establish an employee’s workweek to begin on any day of the week, and at any time of the day.

The workweek is the foundation for calculating the employee’s overtime rate, regardless of whether the employee is actually paid on weekly, biweekly, monthly, or on some other schedule. Accordingly, if a non-exempt loan officer works longer than 40 hours in that workweek, the loan officer has earned overtime compensation for those additional hours at a rate of 1.5 times the regular rate of pay.

To derive the employee’s regular rate for any given workweek, the employer must calculate the employee’s total remuneration for employment in that week:

- If the employee is paid solely an hourly rate, then the hourly rate is the “regular” rate.
- If the employee receives a salary or a guaranteed draw, then the salary or draw apportioned to that workweek is included in the total remuneration.
- If the employee earns commissions (such as a fixed percentage of the amount of each loan originated), then the remuneration also must include the commissions earned during that workweek.

The amount of an employee’s earned commissions may not be fully known at the end of the pay period. However, as soon as the amount of commissions earned during that overtime workweek may be ascertained, the employer must recalculate the rate of pay for that workweek and may need to pay the employee additional overtime compensation.

Once the employee’s remuneration for an overtime workweek (including

hourly, salary, and commission compensation) is totaled, the employer must divide that number by the total number of hours worked during that week. The resulting number is the employee's regular rate of pay for that workweek, which the employer then multiplies by 1.5 in order to determine the overtime rate.

The employer must then pay the employee that overtime rate for every overtime hour worked in that workweek.

### EXAMPLE: LOAN OFFICER EARNING COMMISSIONS

For example, consider a loan officer who is paid twice per month. During the first pay period of the month, the loan officer receives a guaranteed draw of \$1,000. During the second pay period of the month, the loan officer receives a guaranteed draw of \$1,000, plus any commissions earned during the month that are in excess of those draws.

During one workweek, the loan officer works 45 hours. Accordingly, that is an overtime workweek, and the employer must calculate the employee's regular rate of pay for that week. The guaranteed draw must be reduced to its workweek equivalent (\$1,000 semi-monthly means \$24,000 annually, divided by 52 weeks, to equal \$461.54).

To the extent the employer can ascertain how much in commissions the loan

officer earned for that week, that dollar amount must be added in. If, however, the employer cannot yet ascertain the amount of commissions for that workweek (because, for example, the amount depends on the loan officer's total originations for the month), the employer can disregard those commissions until they can be ascertained.

We'll assume that is the case here, so this loan officer's regular rate of pay for that workweek is \$461.54 divided by 45 hours, for a rate of \$10.26. The employer must, then, pay the loan officer overtime pay at a rate of \$15.39 (\$10.26 times 1.5) for those 5 overtime hours (\$15.39 times 5 = \$76.95).

When the employer is able to ascertain how much in commissions the loan officer earned during that overtime workweek, the employer must recalculate the overtime rate for that week.

For instance, assume that, based on the loan officer's monthly originations, the loan officer earned \$3,750 in commissions for that workweek. Then the loan officer's resulting rate of pay for that overtime week was actually greater: \$3,750 divided by 45 hours, for a rate of \$83.33. The employer then owes the loan officer overtime pay at a rate of \$125 (\$83.33 times 1.5) for those 5 overtime hours (\$125 times 5 = \$625). Since the employer has already paid the loan officer \$76.95 in overtime pay, the employer must, as

soon as reasonably practicable, pay the loan officer the remaining overtime compensation to which the loan officer is entitled (\$625 minus \$76.95 = \$548.05).

(Remember, these calculations are related solely to the overtime portion of the loan officer's compensation, which is in addition to the loan officer's draws, and commissions net of the draws.)

### MAINTAIN PAY-ROLL RECORDS

Federal law requires employers to maintain comprehensive payroll records, including when the employee's workweek begins, the regular rate of pay for any overtime workweeks, the basis for calculating the employee's compensation, the hours worked each workday and total hours worked each workweek, and the total wages paid each pay period.

Obviously, overtime expenses (in dollars, record-keeping efforts and math headaches) can add up quickly. An employer can seek to reduce those expenses by instituting a policy allowing loan officers to work overtime only with advance approval. However, an employer cannot deny a non-exempt employee overtime pay, at the correct rate, if the employee does, in fact, work overtime hours.

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## LOAN OFFICER OVERTIME PAY

### 45-HOUR WORKWEEK (5 HOURS OVERTIME)

Weekly Draw	\$461.54	(\$24,000 annually divided by 52 weeks)
Regular Rate of Pay	\$10.26/hour	(\$461.54 divided by 45 hours)
Overtime Rate	\$15.39/hour	(\$10.26 times 1.5)
Overtime Pay	\$76.95	(\$15.39 times 5)
<b>TOTAL PAY</b>	<b>\$538.49</b>	(\$461.54 PLUS \$76.95)

### WHEN COMMISSION ADDED

Week's Commission	\$3,750	
Refigured Rate of Pay	\$83.33	(\$3,750 divided by 45 hours)
Overtime Rate	\$125	(\$83.33 times 1.5)
<b>OVERTIME PAY</b>	<b>\$625</b>	(\$125 times 5) MINUS \$76.95 already paid