

Connecticut Court Upholds Use of Fluctuating Workweek Method to Pay Salaried Non-Exempt Employees

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Connecticut state law, like the federal Fair Labor Standards Act (“FLSA”), requires employers to pay non-exempt employees one-and-one-half times their regular rate of pay for any hours worked in a workweek in excess of 40. A Connecticut Superior Court has held that the fluctuating workweek method (“FWW”) of overtime calculation complies with Connecticut state wage law. See *Roach v. Moran Foods*, No. HHD-CV-11-6023386-S (Conn. Super. Mar. 16, 2012). The court reasoned that because the Connecticut Legislature identified in the wage law (C.G.S.A. § 31-76(b)(1)) a specific category of employees (i.e., delivery drivers) to which the FWW method may *not* apply, the intent of the Legislature was to allow the FWW to apply to other employees.

Pursuant to FWW, to determine overtime for salaried non-exempt employees, an employer divides the weekly wage by the total number of hours worked during the week and pays additional half-time for overtime hours. The more overtime hours worked, the lower the regular rate of pay and the overtime due for each overtime hour.

For example, a non-exempt employee who worked 50 hours in a week with a weekly salary of \$1,000 would be owed the following in overtime under the FWW method: $\$1000/50 \text{ hours} = \$20/\text{hour regular rate of pay}/2 = \$10 \text{ times } 10 \text{ overtime hours} = \100 overtime due .

The FWW method of overtime payment allows employers to reduce overtime expense by paying “half time” to salaried non-exempt employees for all overtime hours if the following four factors are satisfied:

- (1) employees’ hours fluctuate from week to week;
- (2) employees receive a fixed salary each week that does not vary with the number of non-overtime hours worked during each workweek;
- (3) the fixed salary provides compensation every week at a regular rate that is at least equal to the minimum wage; and
- (4) the employer and employees’ share a “clear mutual understanding” that the employee will be paid the same fixed salary, regardless of the number of hours worked.

Roach v. Moran Foods could be appealed. Moreover, if an employer misuses the FWW method, it could be liable for additional overtime expenses as well as liquidated damages if the misuse is challenged by the Department of Labor or in a lawsuit. Employers who avail themselves of the FWW method of overtime should ensure they are properly implementing its requirements. For example, employers should state in their offer letters that the employee’s hours will fluctuate but that the employee “clearly understands” that their annual salary compensates them for all hours worked. Such language also should be used in offer letters to salaried exempt employees as it can be helpful evidence in a misclassification case that the FWW method applies for any overtime liability.

Jackson Lewis attorneys are available to assist employers with this and other workplace requirements.

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