



WAGE AND HOUR LAW BASICS

FAQs Regarding 7(i) Overtime Exemption for Commissioned Sales Employees

1. What is the 7(i) overtime exemption for commissioned sales employees?

The 7(i) overtime exemption, under the Fair Labor Standards Act (FLSA), allows certain commissioned sales employees in retail or service establishments to be exempt from overtime pay requirements. This means they are not entitled to overtime pay for hours worked over 40 in a workweek if specific conditions are met.

2. Who qualifies for the 7(i) exemption?

Commissioned sales employees working in a retail or service establishment qualify for the 7(i) exemption. These establishments are defined as businesses where 75% or more of their sales of goods or services are not for resale and are recognized as retail in the industry.

3. What are the criteria for the 7(i) exemption?

To qualify for the 7(i) exemption, the following criteria must be met:

- **Earnings from Commissions:** The employee must earn more than half of their total earnings from commissions over a representative period chosen by the employer, which can range from 1 month to 1 year.
- **Regular Pay Rate:** The employee's regular pay rate must exceed 1.5 times the federal minimum wage, currently set at \$10.88 per hour.
- **Hours Worked:** The employer must meticulously track and document the employee's hours worked and wages earned to ensure compliance with the exemption criteria.

4. How do we choose the representative period for commissions?

The representative period for calculating commissions must be a time frame selected by the employer, which can be as short as 1 month or as long as 1 year. This period should accurately reflect the employee's typical earning pattern.

5. Do we need to track hours for employees under the 7(i) exemption?

Yes, it is crucial to track hours worked for employees under the 7(i) exemption. Accurate records of hours worked, and earnings are essential to ensure compliance with the exemption requirements and to demonstrate that the criteria are met.

6. Can an employee be paid entirely on commission under the 7(i) exemption?

Yes, an employee can be paid 100% on commission if:

- Their hours are tracked, and they earn at least the federal minimum wage each pay period.
- If their commissions do not meet 1.5 times the minimum wage, the employer must pay the difference as overtime pay.

7. What happens if an employee's commissions are too low in a given pay period?

If an employee's commissions in a given pay period do not exceed 1.5 times the federal minimum wage, the employer must make up the difference. This ensures the employee's regular rate of pay meets the minimum requirement, and overtime pay must be calculated accordingly.

8. How should we handle base pay plus commission arrangements?

- Ensure the total earnings (base pay + commissions) meet the criteria for the 7(i) exemption.
- If the base pay alone does not meet 1.5 times the minimum wage, the combined earnings from commissions must cover the shortfall.

9. What should we do if an employee leaves before completing a representative period?

Calculate the average hourly rate based on the employee's total earnings during their employment period. Ensure any necessary supplemental or "catch-up" pay is provided to comply with the exemption requirements.

10. How do we manage draws on commissions?

- Draws on commissions can be used to ensure employees earn at least the minimum wage each pay period.
- Draws can be deducted from future commissions, but this must not result in the employee's pay falling below the minimum wage.
- If the draw is not replenished by future commissions upon the employee's separation, it cannot be recovered from the exempt employee.

11. Can we deduct fees from an employee's pay?

- Deductions must not reduce an employee's pay below the minimum wage.
- Deductions that benefit the employer are generally not allowed, while those that benefit the employee may be permissible, depending on state laws.

Disclaimer: The above information is provided for general guidance purposes and is not intended to be legal advice. Compliance determinations must be made on a case-by-case basis and depend on various factors. You should consult a licensed attorney with employment law experience to determine specific actions.