Blogs
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Wage & Hour Developments

# COVID-19 Hazard Pay and Overtime Violations

**What Is COVID-19 Hazard Pay?**

The COVID-19 pandemic motivated many employers to provide extra wages, often referred to as "hazard pay," to employees who continued to work throughout the pandemic, despite the threats created by the virus, particularly pre-vaccine. Hazard pay is provided both to incentivize employees to work in potentially hazardous conditions and to compensate those individuals for the additional risks they assume.

**Hazard Pay Liability**

The Fair Labor Standards Act (FLSA) does not mandate hazard pay for private sector workers. However, potential wage-and-hour liability exists for employers that provided additional pay in response to the COVID-19 pandemic. This is true whether the pay was provided voluntarily or in response to so-called hazard pay or "hero pay" mandates imposed by some jurisdictions like Los Angeles, California and Seattle, Washington. The reason is many employers neglect to factor "hazard pay" into the regular rate for compensation purposes.

Under the FLSA, overtime pay is calculated at 1 1/2 times the employee's regular rate of pay for each hour worked in excess of 40 hours in a workweek. COVID-19 hazard pay must be factored into an employee's regular rate for overtime purposes, thus increasing the regular rate of pay used to determine overtime. At the height of the pandemic, employers often added between $2 and $5 to their employee's hourly wages. An employee with a $15 an hour rate of pay would normally receive an overtime pay rate of $22.50. If that hourly rate was increased by $3 for hazard pay, to a total of $18, the overtime rate would jump to $27 for each hour of overtime. For employers with hundreds of employees and thousands of overtime hours, back pay damages will rise quickly.

Moreover, the FLSA imposes significant penalties for noncompliance with pay violations. Employees are not only entitled to back pay, they also are entitled to liquidated damages and reasonable attorneys' fees. Liquidated damages are an amount equal to any back pay awarded, essentially giving workers "double damages." In addition, the statute of limitations (and the potential period for back pay awards) increases from two to three years for willful violations of the FLSA. Some state wage-and-hour laws provide more time to file for overtime violations, extending the limitations period to six years. Accordingly, in a state like New York, a miscalculation in 2020 could come back to haunt an employer in 2026. Varying state laws may provide for separate or additional remedies.

An employee may file a lawsuit seeking to represent other similarly situated employees alleging their employer violated the FLSA by failing to include such additional wages in the regular rate of pay when calculating overtime. There have already been over a dozen such cases filed at a federal level. This trend is likely to continue given that many employers offered additional pay to workers as an incentive during the pandemic.

**What Should Employers Do?**

Employers who are concerned they may not have properly calculated overtime pay should contact an attorney immediately to determine next steps. Simply providing retroactive pay is not a cure-all for an overtime violation. Workers who receive a retroactive payment can still file claims for liquidated damages and seek reasonable attorneys' fees.

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