

# August 2022 Updates to Pennsylvania's Overtime Rules for Salaried Nonexempt Employees

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On August 5, 2022, new Pennsylvania state wage-and-hour regulations for tipped and salaried nonexempt workers under the Pennsylvania Minimum Wage Act (PMWA) go into effect. This article focuses exclusively on the new rules for salaried nonexempt employees.

## New Overtime Calculation for Salaried Nonexempt Employees

Under the new regulation, codified at 34 Pa. Code § 231.43(g), Pennsylvania employers must calculate the regular rate of pay for salaried nonexempt employees by adding all remuneration (subject to certain preexisting exceptions) paid to the employee during a workweek (e.g., weekly salary, nondiscretionary bonuses, and commissions) and dividing this amount by 40 hours. To calculate the overtime (OT) pay due, the regular rate is (a) multiplied by 1.5 and then (b) multiplied by the number of hours worked in excess of 40 in that workweek. The new formula under the PMWA for calculating overtime premiums for salaried nonexempt employees is set forth below.

*PMWA Salaried Nonexempt Formula:*

$$[(\text{Weekly salary} + \text{any other remuneration not excluded under 34 Pa. Code § 231.43(a)}) \div 40 \text{ hours}] \times 1.5 \times \text{OT hours} = \text{Total Overtime Owed}$$

The new PMWA salaried nonexempt overtime formula is a departure from the Fair Labor Standards Act's (FLSA) fluctuating workweek (FWW) method of calculating overtime premium pay for salaried nonexempt employees. Under the FWW method (which remains permissible under federal law), overtime pay for salaried nonexempt employees may be calculated by (a) adding the employee's salary and all other remuneration that must be included in the regular rate; (b) dividing that total compensation by the total hours worked in a workweek; (c) multiplying this rate by 0.5 to determine the half-time rate; and, (d) multiplying the half-time rate by the number of overtime hours worked. The federal FWW formula for calculating overtime premiums for salaried nonexempt employees is set forth below.

*FLSA FWW Salaried Nonexempt Formula:*

$$[(\text{Weekly salary} + \text{any other remuneration required to be included in the regular rate}) \div \text{hours actually worked in a week}] \times 0.5 \times \text{OT hours} = \text{Total Overtime Owed}$$

The federal FWW method cannot lawfully be used for Pennsylvania salaried nonexempt workers; indeed, this prohibition has been in place for years, as the Supreme Court of Pennsylvania held in 2019 in [\*Chevalier v. General Nutrition Centers, Inc.\*](#) that the PMWA precluded employers from using the FWW method. The new rule both codifies the *Chevalier* decision and expands upon it by providing that the regular rate for salaried nonexempt employees is calculated by dividing all relevant remuneration by 40 rather than by all hours worked.

## Employer Takeaways

Pennsylvania's new formula for calculating overtime pay for salaried nonexempt employees is, by design, more protective for workers and results in greater overtime pay for this category of workers than under the federal FWW formula. All employers with salaried nonexempt employees in Pennsylvania may want to evaluate whether their practices are in compliance with the new PMWA formula.

Moreover, Pennsylvania employers may have questions about whether the new rules impact overtime calculations for hourly nonexempt employees. The new rules do not address the regular rate calculation for Pennsylvania hourly nonexempt employees. The Pennsylvania Department of Labor and Industry clarified in its answers to [frequently asked questions](#) about the new PMWA rules that the “updated regulation will not change overtime pay calculations for hourly employees.” (Last accessed August 3, 2022.) However, the potential for continued development in this area is possible.

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