

# What is mandatory overtime? A legal look at this common practice

Mandatory overtime is the practice of requiring employees to work more than a standard 40-hour workweek. It is sometimes referred to as compulsory or forced overtime. Simply put, employers can make workers put in as many extra hours as the employer sees fit. Employers can terminate workers who refuse to work a mandatory overtime schedule. There is no federal penalty for doing so as long as employees receive overtime pay.

## Mandatory overtime laws

The Fair Labor Standards Act (FLSA) is the federal law that governs overtime and other pay issues. The FLSA does not prohibit employers from requiring mandatory overtime for the vast majority of workers. Instead, it mandates that employers who do make hourly employees work more than 40 hours per week receive extra pay. For all hours over 40 in a workweek, employees must be paid one and a half their regular hourly rate. This is commonly referred to as time-and-a-half or the overtime rate.

Several federal laws provide for limited exceptions to the general rule that forced, compulsory overtime is mandatory. For example, employees working under a union contract may have the right to refuse compulsory overtime. If the contract bars or regulates overtime, the National Labor Relations Act (NLRA) makes mandatory overtime an unfair labor practice.

Other federal laws limiting mandatory overtime include the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA). The Uniformed Services Employment and Reemployment Rights Act (USERRA) also provides workers with some protection from discipline for refusing overtime. The Occupational Safety and Health Administration (OSHA) requires the employer to maintain a safe workplace. Mandatory overtime hours that impact health and safety may violate OSHA rules. Finally, the FLSA does prohibit mandatory overtime for youth workers under the age of 16.

## Why mandatory overtime?

There are several reasons that employers may choose to require mandatory overtime for workers. First, current employees know their jobs. If employers hired additional employees (and paid them the regular hourly rate rather than overtime), new hires would need training. And that costs time and money. Plus, new employees mean additional costs for benefits. Hiring more workers might also tip the scale for FMLA and Affordable Care Act (ACA) coverage.

Second, in a robust economy such as the current one, employers are having trouble finding qualified applicants. That's especially true for part-time employees, as fewer workers are seeking such positions.

Third, employers may not need workers for mandatory overtime on a regular basis. It's easier to have current employees step up and work compulsory overtime hours when needed. Otherwise, employers might have to rely on temporary employees or continuously hire and lay off workers as needs ebb and flow.

Finally, make sure that your mandatory overtime schedules are reasonable and not harmful. Requiring excessively long shifts may interfere with both productivity and safety. Plus, some industry regulators do limit total hours worked for some employees. These rules serve as mandatory overtime limitations. Workers affected include truckers, pilots and others in high-risk positions.

## **FMLA and mandatory overtime**

For covered employers with 50 or more workers, the FMLA applies. Eligible workers are entitled to up to 12 weeks of unpaid leave per year for their own illnesses. Leave is also available to care for a close relative or to bond with a new child. Additional leave is available for military members and their families. Plus, when an employee needs FMLA leave for their own serious health condition, they can take that leave intermittently.

FMLA leave is an entitlement. Mandatory overtime does not trump the right to FMLA leave for any covered reason. Take, for example, an employee who periodically suffers from migraine headaches. If a doctor certifies the need for intermittent leave when a headache happens, the employer must allow time off. Thus, the employee can call off for a migraine even if he was already scheduled for a mandatory overtime shift. The employer cannot discipline that worker for calling off if there's already an intermittent leave certification in place.

Similarly, an employee with an FMLA certification limiting hours per week cannot be forced to work overtime. Nor can a worker who needs FMLA leave for a seriously ill child, parent or spouse.

Employers should also be aware that there are special FMLA leave rules for those who have worked mandatory overtime before taking leave. How you count hours missed depends on whether overtime was mandatory or voluntary. If an employee missed voluntary overtime for a serious health condition, do not count the missed time as FMLA leave. On the other hand, if the missed time was mandatory overtime, count it against the FMLA entitlement. But you must also credit regularly worked mandatory overtime hours towards FMLA eligibility. When the employee does take a week of FMLA leave, he's entitled to more than 40 hours of leave that week.

## **ADA and mandatory overtime**

The ADA requires employers to make reasonable accommodations that allow disabled workers to perform the essential functions of their jobs. Disabled workers may be entitled to schedule changes as part of those reasonable accommodations. Those accommodations can include restrictions on the number of hours worked per day or week. Thus, it may be a reasonable accommodation to excuse any mandatory overtime.

If a disabled employee requests to be exempted from compulsory overtime, make sure you start the interactive accommodations process. That is, explore the claimed disability, review medical certifications and restrictions and discuss alternatives. If the employee cannot work more than 40 hours per week, decide if it's reasonable to excuse him. See if there are other possible solutions. Are there other employees willing and able to pick up the shifts? Could the disabled employee work some overtime shifts, but not others?

## **USERRA and mandatory overtime**

Individuals who are members of one of the military branches may be called to active duty periodically. USERRA allows them to take that time off. For example, reservists may have to train one weekend per month. Or they may be called to temporary active duty during natural disasters or military conflicts.

Employers may not discipline service members if their military obligations interfere with scheduled mandatory overtime. Like FMLA leave, military leave is an entitlement. It does not matter if the call-up is during the employer's busiest time. You must also reinstate the service member when his or her service is completed. Plus, you must credit them with seniority as if they had never left. Thus, if the service member's co-workers worked

mandatory overtime, you must credit that missed time to seniority.

## **OSHA and mandatory overtime**

The Occupational Health and Safety Act (ACT) requires employers to provide a workplace free of hazards causing serious physical harm or worse. Whether those hazards include extreme mandatory overtime is a matter of interpretation. OSHA, which administers the Act, believes that requiring unreasonable hours may qualify. Though there are no specific OSHA standards, the agency does raise fatigue as a possible danger. The agency urges employers to use common sense and not overwork employees during extended mandatory overtime. It has extensive guidance on its web page [here](#).

## **Youth employees and mandatory overtime**

While the FLSA doesn't prohibit employers from requiring mandatory overtime for most workers - youth employees are a different matter. The FLSA along with many state child labor laws limit the hours employees under 18 can work.

The FLSA classifies employees younger than sixteen years old as youth employees. Employers cannot hire workers who are not at least 14 years old (there are some very limited exceptions). Once hired, youth employees have work hour restrictions.

Youth employees aged 14-15 may work outside school hours performing non-manufacturing, non-mining, non-hazardous jobs. But they cannot work more than 3 hours per day on school days. Nor can they work more than 18 hours per week in school weeks or 8 hours a day on non-school days. They may never work more than 40 hours per week even when school is not in session. In other words, they can never work mandatory overtime, even in the summer.

Once the youth worker reached age 16, they may work unlimited hours in non-hazardous positions.

## **State rules on mandatory overtime**

Employers should check whether their state may have additional requirements for overtime, whether mandatory or voluntary. For example, California requires that employees receive overtime pay for all hours worked beyond 8 per 24-hour period. Some state laws also require meal and rest breaks at various times during an extended shift.