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Nonexempt Doesn't Have to Mean Hourly.

Most employers assume that a nonexempt employee must be paid by the hour.

Not necessarily.

The fluctuating-workweek method allows employers, in states where it is permitted, to pay certain nonexempt employees a fixed salary while still paying overtime when they work more than 40 hours.

It may be a good fit when:

- the employee's hours genuinely fluctuate from week to week;
- the employee receives the same fixed salary in shorter and longer workweeks;
- the salary is large enough that the employee's pay never falls below the applicable minimum wage, even in the longest workweeks;
- the employer and employee clearly understand that the salary covers all straight-time hours worked, not merely 40 hours; and
- the employer continues to record all hours and properly calculate overtime each week.

For the right positions, the method can give employees a predictable paycheck and accommodate changing workloads. Since a 2020 U.S. Department of Labor rule, employers may also pay bonuses and premium pay on top of the fixed salary, as long as those payments are included in the regular rate when calculating overtime.

Here is how the math works. Each week, the regular rate is the salary divided by all hours actually worked that week. Because the salary has already compensated the employee at straight time for every hour worked, the employer generally adds a half-time premium, not another full time-and-a-half payment, for hours over 40. And because the fixed salary is spread over more hours in longer weeks, the overtime premium per hour goes down as hours go up. That is why the method can help employers control overtime costs compared with a traditional hourly structure.

It is a little-known and underused compensation option. But the details matter, and state law does not permit it everywhere.

I'm happy to explain more about how the fluctuating-workweek method works, who might qualify and how to set it up.

#EmploymentLaw #WageAndHour #Overtime #FLSA #HRCompliance