

Answers for overtime issues

By Ginny Hegarty

Q: I've always paid my staff a salary just in case we run into lunch or run late at the end of the day from time to time. I thought this protected me from having to track hours and pay overtime. Am I right?

A: The method of compensation you choose is not the determining factor for overtime liability. This is a common misconception.

What matters most is each employee's job classification; first you need to determine if your employees are exempt or non-exempt according to the definition established by the Fair Labor Standards Act (FLSA) and by your individual state. If the standards differ between the state and federal guidelines you must abide by the stricter of the two standards. The exempt status generally applies to executive and supervisory positions, and those employees are exempt from having to be paid overtime.

The reality for most dental practices is that 95 percent of all employees are non-exempt and must be paid overtime when they trip the overtime trigger in your state. That trigger is 40 hours in one week except in California, Nevada, Colorado, Florida and Alaska, where the trigger is a daily overtime obligation.

So, should you pay your staff a salary or on an hourly basis? There is no one correct answer; you'll need to determine what is best for your individual practice and staff. At first glance it would appear that a salary has more advantages than hourly pay, but doctors and staff have made valid cases for why hourly is preferable to them. In my opinion the true test is whether you each feel that at the end of a pay period that you have made an equal exchange of time, talent and service for compensation received.

If staff members are supposed to work 35 hours and actually work closer to 38, they can feel cheated by a salary. Likewise, the doctor may feel frustrated by their reaction when he thinks that many weeks they really work much less than 35 hours and are still paid a full salary. You need to decide which method will foster the greatest sense of equity for everyone involved.

Regardless of your method of compensation you still need to track hours worked. Yes, that's right—even if you choose to pay your employees on a salaried basis you must track hours worked to maintain compliance with the FLSA provisions regarding overtime and lunch breaks. If a salaried employee works more than 40 hours in a workweek, she must be compensated at an overtime rate for all hours greater than 40. All employees must also take a minimum 30-minute lunch break after working five hours, unless they are only working a total of six hours.

To limit your liability, you must have records to validate compliance. Time records should be kept on file in the practice regardless of whether they are kept in a log written by the employees, computer record or time clock records. One of the newest methods available is a time clock that is activated by each employee's fingerprint.

This prevents "buddy punching," which has frustrated many doctors and staff members through the years. While the practice owner's frustration is clear, staff members also tell me they resent being asked to clock their coworkers in or out when they will be late or want to leave early, and it can create tension between them that can interfere with their ability to work together.

Bottom line, it's your responsibility to know and comply with the federal and state laws. If a disgruntled employee reports you to the Department of Labor for overtime violations, your documentation will be your only defense. Without documentation you will be liable for any current offenses, and your liability can extend back three years. Ignorance is not a defense; learn the laws to protect yourself.

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