

LEGAL Q&A

Q Does paid time off count for overtime calculation purposes?

A NO, gratuitous paid time off, such as vacation time, sick time, holidays, even a paid lunch break, does not count as "actual time worked" for overtime calculation purposes for non-exempt employees. The fact that an employee is paid for the equivalent of 40 hours in a workweek, or even is on a schedule for 40 hours in a workweek, is not dispositive of whether someone is entitled to overtime or not. Overtime is based on the actual time worked during that workweek. New Jersey law requires employers to pay time and a half for all actual time worked over 40 hours in a workweek. It does not matter if one works on a weekend, during the night shift, or even for 24 hour shifts--the magic number is 40 hours in a 7 day workweek, and the magic words to be eligible for overtime are "actual time worked". Thus for example, if an employer pays the equivalent of 40 hours which includes 1 hour each day for lunch, the reality is that the employee only actually worked 35 hours that week, and still have 5 more hours of actual time to be worked before being eligible for overtime. Likewise, if an employer pays for a full 8 hour a day workweek, but there was no work on one day because of a holiday, in reality, that employee only worked 32 hours, and the employer is entitled to 8 more hours of work before it is required to pay OT.



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