

# Are Your Employees Entitled to Daily & Weekly Overtime?

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Since December, the topic of daily and weekly overtime obligations has been on the top of employers' minds because of a lawsuit involving a Portland bakery and a reversal in guidance from the Oregon Bureau of Labor and Industry (BOLI). In order to understand the recent developments, it is important to have some background on the overtime law in Oregon.



Under Oregon law, non-exempt employees are entitled to weekly overtime for hours worked in excess of forty hours in a week. Oregon law also provides that employees working in mills, factories, and manufacturing establishments are entitled to daily overtime for hours worked in excess of ten hours in a day. It is important to note that under Oregon law there is no clear and concise definition of "mill, factory, or manufacturing establishment" for the purpose of daily overtime.

When the daily overtime law was passed, over 100 years ago, manufacturing was much different than it is today. Activities we do not immediately associate as "manufacturing" today will likely trigger the obligation of daily overtime. For example, BOLI considers employees working in breweries as manufacturing employees entitled to daily overtime. The scope of daily overtime today is much broader than traditional steel mills and factories. There are several exemptions from the daily overtime laws for manufacturing employees. First, employees who are covered by a collective bargaining agreement are exempt from daily overtime laws. Second, employees working at sawmills are also exempt.

For decades, BOLI explained that when employees who are entitled to daily overtime have worked more than forty hours in the work week and have also exceeded the maximum number of hours on one or more days, thereby earning daily overtime, the employer should calculate overtime hours worked on both the daily and weekly basis and pay the greater amount. However, BOLI recently reversed its guidance in correlation to a lawsuit involving Portland Specialty Baking, a commercial bakery.

BOLI announced that effective January 1, 2017 employees are entitled to both the daily overtime and the weekly overtime amounts. The explanation provided by BOLI is the two statutes enact distinct overtime requirements and serve different purposes with respect to restrictions on hours worked by employees. BOLI updated its guidance and provided examples of its new interpretation. For example, employees working four daily shifts of 12 hours each would be entitled to eight hours of daily overtime plus eight hours of weekly overtime for a total of 16 overtime hours during the week. This was the same theory advanced by the plaintiffs in the lawsuit involving Portland Specialty Baking, LLC.

In the Portland Specialty Baking case, the plaintiffs filed a class action lawsuit claiming the employer failed to pay both daily and weekly overtime, in violation of Oregon law. The bakery filed a motion for summary judgment, seeking dismissal of the overtime claim. On March 9, 2017, a Multnomah County judge dismissed the lawsuit, and held that employees working in mills, factories and manufacturing establishments are entitled only to the greater of daily or weekly overtime pay in a workweek, not both. However, the case is not yet final and the decision is subject to appeal.

In the meantime, the Oregon legislature is considering pending legislation on this issue. Senate Bill 984, if it becomes law, will clarify that daily overtime and weekly overtime are both calculated and the higher amount of the two is paid to the employee.

While Oregon employers may soon have a definitive ruling on the intersection of daily and weekly overtime, a larger issue remains uncertain — how expansive is the definition of "mill, factory or manufacturing establishment?" Under current Oregon law, the definition is confusing and cumbersome to apply in a modern industrial setting.

BOLI explains a "manufacturing establishment is any place where machinery is used for manufacturing purposes, which includes the process of making goods or any material produced by machinery; anything made from raw materials by machinery; and the production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, by the use of machinery." This definition provides little guidance to employers; however, BOLI recently issued a letter which included an example of a baker to provide insight on the topic.

On one hand, a person baking bread at a restaurant might be said to "manufacture" bread, however, they are not manufacturing bread in a factory, mill or manufacturing establishment. On the other hand, a person working at a facility where bread is produced systematically with the use of machinery on a large scale is likely to be working in a factory or manufacturing establishment.

Employers are wise to check with legal counsel to understand whether their employees are entitled to daily overtime, and to ensure compliance with correctly calculating overtime payments.

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