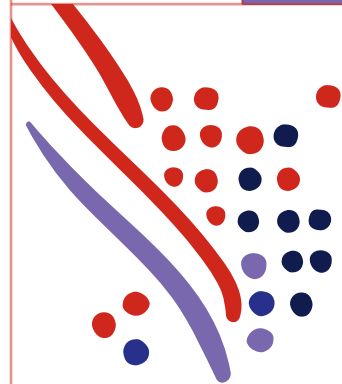
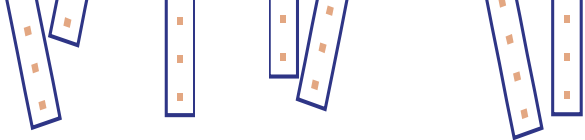


Key Considerations When Changing Employee's Pay Frequency

April 22, 2022 | Chicago APA Chapter





Disclaimer

This presentation is not:

- Legal advice
- The final word on today's topics
- A political opinion

Before taking any actions

Before taking any actions on the information contained in this presentation, employers should review this material with internal and/or external counsel.



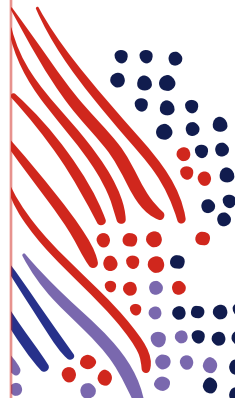
Tracy L. Sigmann, CPP

Legal Compliance Director, ADP

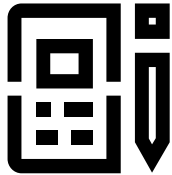
tracy.sigmann@adp.com
(973)577-3657

Agenda

- FLSA and state wage and hour law considerations when making a pay frequency change
- How a pay frequency change can affect overtime and benefit deductions
- Tips for communicating a pay frequency change to employees



Polling question



What pay frequency does your company use?

- a. Weekly
- b. Biweekly
- c. Semimonthly
- d. Monthly
- e. Other



FLSA and state wage and hour law considerations

Pay frequency

When must employees be paid?



- FLSA does not address how often or when wages must be paid
 - U.S. Department of Labor: “minimum wage and overtime compensation must generally be paid on the regular payday for the workweek or pay period”
- Most states have general requirements for the frequency of wage payments
 - Requirements for specific industries or types of employees
 - Exceptions for specific employees, employers or situations
 - Payday and pay period requirements
 - Number of days wages must be paid after the pay period ends

Pay frequency

States with no general pay frequency requirements



- Alabama
- Florida
- Wyoming
 - For most Wyoming employers, there is no timely payment requirement of regular wage payments
 - Employers engaged in operating any railroad, mine, refinery, and work incidental to prospecting for, or the production of, oil and gas, or other factory, mill or workshop do have pay frequency requirements

State pay frequency requirements

Examples



- Daily, weekly, biweekly, semimonthly, monthly
- Require employers to designate specific paydays and pay period
- Designate how much time can elapse between the end of a pay period and the pay day
- Require how non-workdays/holidays or employee absence affect pay date
- Exceptions to the rules
 - CBA, specific employees (e.g., manufacturing, farm workers, manual workers), types of employers or circumstances, industries, unionized workforce, state labor department exception

State pay frequency

California is special



- Employees must be paid at least twice during each calendar month on the days designated in advance as regular paydays
- Employers must establish a regular payday and are required to post a notice that shows the day, time and location of payment
- California has laws regarding what days pay dates must fall on, when regular wages must be paid, and when overtime wages must be paid

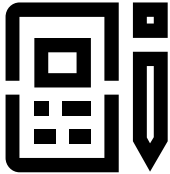
California

Wage payment rules



- Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid no later than the 26th day of the month during which the labor was performed, and wages earned between the 16th and last day of the month must be paid by the 10th day of the following month.
- Other payroll periods such as weekly, biweekly (every two weeks) or semimonthly (twice per month) when the earning period is something other than between the 1st and 15th, and 16th and last day of the month, must be paid within **seven calendar days** of the end of the payroll period within which the wages were earned.
- Overtime wages must be paid no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned.
- Some exceptions

Polling question



In California, overtime wages must be paid no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned.

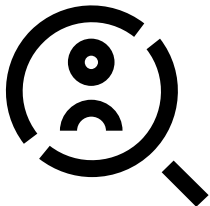
- True
- False

Solution



True.

Overtime wages must be paid no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned.



An employer shall be in compliance with Labor Code Section 226(a) relating to total hours worked by the employee if the overtime hours are recorded as a correction on the itemized statement for the next regular pay period and include the dates of the pay period for which the correction is being made. Labor Code Section 204(b)(2)

California paydays, pay periods and the final wages:
https://www.dir.ca.gov/dlse/faq_paydays.htm

California overtime: https://www.dir.ca.gov/dlse/faq_overtime.htm

State pay frequency

New York....also special



- Clerical and other workers (not manual workers, railroad workers, commission salespeople, or exempt executive, administrative, or professional employees) must be paid wages earned in accordance with the agreed terms of employment
 - Must be paid at least semi-monthly
- Manual workers (mechanic, workingman, or laborer) must be paid weekly

New York

Rules for Commission Salespeople



- Specific rules apply to commission salespeople (employees whose principal activity is selling any goods, wares, merchandise, services, real estate, securities, insurance, or any article or thing)
 - Must be paid wages, salary, drawing account, commissions, and all other monies earned or payable in accordance with agreed terms of employment, but not less frequently than once in each month
 - Can be paid the above compensation in the following month in which it is earned
 - If monthly or more frequent payment of wages, salary, drawing account, or commissions are substantial, can be paid extra or incentive earnings, bonuses, and special payments less frequently than monthly in accordance with terms of agreement or compensation plan



Connecticut

Limited options for pay frequency



- All employees must be paid weekly or biweekly
- Employers can apply for an exception to biweekly pay requirement if each employee affected is paid at least once per month
- The end of a pay period cannot be more than eight days before the regular pay day

Hawaii

Let's vote on it



- Hawaii requires wages to be paid at least twice a month
- Like other states, Hawaii will allow an employer to petition the Labor Director to establish regular pays less frequently than semimonthly provided: 1) employees are paid in full at least once a month on a regularly established scheduled; and 2) earned wages are paid within 15 days after the end of each pay period
- Unlike other states, employees may file a petition for a secret ballot election with the Hawaii Department of Labor and Industrial Relations to be paid once a month or terminate once-a-month pay
 - For unionized employers, petition must be submitted by the union representative with the concurrence of at least 25% of the total number of eligible voters
 - For non-union employers, petition may be submitted by any employee with concurrence of at least 25% of eligible voters



Illinois

Pay day requirements



- Illinois has specific requirements on the time that can elapse between the end of the pay period and the pay day for that pay period
 - Daily – wages must be paid on the same day as they were earned (if possible) or no later than 24 days after the day earned
 - Weekly – wages must be paid no later than 7 days after the pay period ends
 - Bi-weekly – wages earned must be paid no later than 13 days after the pay period ends
 - Monthly – wages must be paid on or before 21 calendar days after the period during which wages are earned
- Exception is provided for employees covered by a collective bargaining agreement



Pay frequency requirements

For paid sick leave

Certain states with **mandatory paid sick leave**, require employers to pay employees no later than the payday for the **next** regular payroll period after sick leave was taken (same schedule as regular wages are paid).

- Employers cannot delay compensating employees for earned paid sick time.
- Employers can pay in the same payroll period sick leave is taken.



- California
- Massachusetts
- Nevada
- Ohio
- Oregon
- Vermont
- Washington

Pay frequency

Best practices



- Employers must carefully **consider** their pay periods and pay dates based on where employees are working
- **Review** compliance information and guidance issued by state agencies
- Ensure **proper** display of period beginning, period ending and pay dates on wage statements
- Employers **must** review pay schedules and pay dates on a regular basis, including when starting new business and at the beginning of the new year

Pay frequency

Best practices (cont.)



- For unionized employers, **consider** whether pay frequency change must be negotiated with the union and review the applicable collective bargaining agreement
- Prior to considering a change, **review** employee agreements and contracts to determine whether an employee's pay frequency is a term that cannot be changed without revising the agreement
- Penalties apply for **failure** to comply with timely payment of wages and can lead to class action lawsuits



How a pay frequency change can affect overtime and benefit deductions

Pay frequency change

Overtime



- FLSA overtime and state weekly overtime requirements are based on a defined workweek, **NOT** a pay period
- Averaging of hours over two or more weeks for purposes of overtime calculation is generally not permitted
- Non-exempt employees should be compensated on a weekly or bi-weekly basis as a best practice
- While state laws on the payment of overtime differ, most states that have a separate overtime requirement require that overtime be paid in the pay period when it is earned or the pay period immediately following the pay period when it is earned

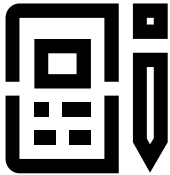
Pay frequency

Benefit and other issues to consider when making a change



- Health insurance and other benefit premiums may have to be recalculated
- Wage garnishments, such as child support, may need to be adjusted to reflect the change
- Paid Time Off – if PTO (or, vacation, mandatory sick leave) accrues per period, adjustments must be made
- Voluntary deductions
- Employee direct deposit split amounts
- Employee tax withholding elections when “extra dollar amount” per pay period
- Employer acquisitions and mergers – may want to coordinate pay dates

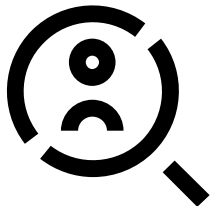
Polling question



In general, overtime for an employee is calculated on the employee's pay period.

- True
- False

Solution



False.

FLSA overtime and state weekly overtime requirements are based on a defined workweek, **NOT** a pay period.

U.S. Department of Labor Overtime Pay: Fact Sheets -
<https://www.dol.gov/agencies/whd/overtime/fact-sheets>



Tips for communicating a pay frequency change to employees

Payday changes

State notice requirements



- Many states have laws requiring employers to provide notice to employees of a payday change prior to the change going into effect
 - **California** – Notice must give employees written notice about regular payday changes before or after 7 calendar days of changes occurring unless notice is given in another writing required by law within 7 days before or after changes
 - **New York** – Written notice of a payday change must be provided to employees at least 7 calendar days before the change occurs
- Some States require more advanced notice of a change
 - **Maine** – 30 days' written notice
 - **Nebraska** – 30 days' written notice
 - **Rhode Island** – written or posted noticed at least 3 paydays before a change occurs

Payday notice requirements

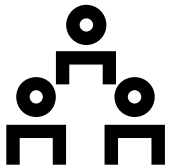
State posting requirements



- Some states additionally have posting requirements for paydays
 - **California** – Employers must conspicuously post at the place of work or where it can be seen as employees come or go, or at the office or nearest agency for payment kept by the employer a notice specifying the regular paydays and the time and place of payment
 - **Colorado** – Employers must conspicuously post a notice about payday and time and place of payment changes at the place of work, where it can be seen as employees come or go, or at the office or nearest agency for payment kept by the employer
 - **Louisiana** – Employers must display a state-issued poster regarding wage payment

Payday change

Notice to employees



- Even in states that do not require advanced notice, it is recommended advanced notice be provided
- In addition to violating state laws where notice is required, failing to provide notice can also lead to potential breach of contract claims
- Providing notice also can reduce an influx of calls and emails to HR (and Payroll!) from employees who want to know why they have not been paid

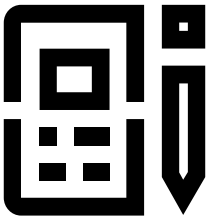
Payday changes

Employee notice best practices



- Spend time thinking about how the change will be communicated
- Inform managers first so they can be prepared to field questions
- Clearly state in employee communication when the change will go into effect and what their new pay schedule will be
- Communicate the change as early as possible
- Provide a mechanism allowing employees to ask questions and provide feedback about the change outside of their manager
- Review form offer letters and employment agreements to make sure pay frequency change is incorporated into the documents
- Consider providing resources to employees, such as an Employee Assistance Program with a financial planning tool

Polling question



The Fair Labor Standards Act (FLSA) establishes the rules for how often and when wages must be paid to employees.

- True
- False

Solution



False.

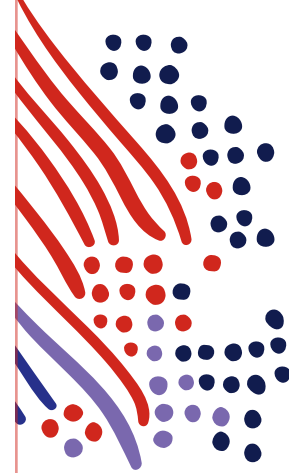
State laws establish how often and when employees must be paid.

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

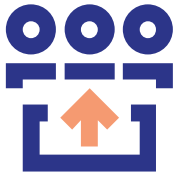
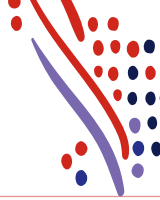
The FLSA only sets the standard that wages required by the FLSA are due on the regular payday for the pay period covered.

Handy Reference Guide to the Fair Labor Standards Act:
<https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa>

Questions?



Thank you for attending!



Subscribe to our *Eye on Washington* email alerts at
<https://www.adp.com/spark/legislation.aspx>



STATE AND LOCAL

Detailed Look at State, Local
and Federal Updates

April issue now available!

For more workforce trends and insights, check out
www.adp.com/blogs

The information provided in this document is for informational purposes only and not for the purpose of providing legal, accounting, or tax advice. The information and services ADP provides should not be deemed a substitute for the advice of any such professional. Such information is by nature subject to revision and may not be the most current information available. ADP and the ADP logo are registered trademarks of ADP, Inc. All other marks are the property of their respective owners.