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Spreading Good Cheer: What Employers Should Know About Holiday Pay For Nonexempt Employees

12/07/16

December ushers in the hustle and bustle of the holiday season. From office parties to school holiday pageants to gatherings with family and friends, employers and employees have many holiday activities on their minds. Despite a more festive atmosphere, the work still needs to get done. One issue that employers must grapple with during this season is holiday pay. The law does not require employers to compensate their nonexempt employees with increased pay for working on a holiday unless an employee's contract provides otherwise.

However, if after an evening of being visited by three ghosts puts you in a more benevolent frame of mind, remember that employers who do opt to spread extra good cheer by giving their employees additional pay during the holidays should know that holiday pay is excluded from a nonexempt employee's regular rate of pay used to calculate overtime compensation under both the Fair Labor Standards Act and New Jersey's Wage and Hour Law. Therefore, an employer's decision to pay an employee additional compensation for working on a holiday will not alter an employee's regular rate of pay.

Employers should also be aware that only the hours a nonexempt employee actually works need to be included in overtime calculations. Therefore, if an employer provides an employee with 8 hours paid time off for Christmas, those 8 hours do not count as hours worked by the employee and therefore are not used to determine if the employee worked more than 40 hours during the week of Christmas.

As always, establishing clear guidelines through policy making is always "in season."

Attorney

- Tracy Armstrong