

Newsletter

October 2011

“NEW MECHANISM FOR THE CALCULATION OF OVERTIME PAYMENT”

Dear Clients and Friends:

Starting August of this year, the Third Appellate Court in the matter of the First Circuit of Labor a new criterion settled jurisprudence, to establish the mechanism for calculating overtime pay, establishing a new mode of payment. Article 66 of the Federal Labor Law states that overtime may not exceed three hours per day or three times a week.

For its part, the numerals 67 and 68 of the order itself indicated, in terms of payment, overtime not exceeding this limit will be covered with 100% more than the appropriate wage, while the hours in excess of nine hours a week shall be paid a salary 200% relevant.

Of such devices is inferred a payment mechanism based not only on the maximum of nine hours generated in a week but daily, reason why it should be addressed to the hours actually worked by each day.

In that sense, it is the following example. If a worker served a full six-day workweek, generating extra twelve hours that week, two extra hours were long working day from Monday to Wednesday, it is clear that the first six hours originated in the first three days will be paid to twice their salary, while the remaining six hours of three days (Thursday to Saturday) shall be paid to three times their salary.

According to this criterion, the current payment method is imprecise, for clarity let us then transcribes the Jurisprudence.

OVERTIME. CALCULATING MECHANISM FOR PAYMENT PURSUANT TO ARTICLES 66 TO 68 OF THE FEDERAL LABOR LAW. Article 66 of the Federal Labor Law states that overtime may not exceed three hours per day or three times a week. Furthermore, the numerals 67 and 68 of the Act point out, in terms of payment, overtime not exceeding this limit will be covered with 100% more than the salary corresponding to the hours of the day, while the excess of nine hours a week should be paid 200% of wage. But such devices have seen a mechanism to calculate your payment based not only on the maximum of nine hours generated in a week, but by day, which is why attention must be paid to the actual hours worked by each day. In that sense, if a worker served a week generating two extra hours a day, it is clear that the first six hours of originated in the first three days will be paid 100% more salary, while the remaining six hours of the next three days with a 200% increase.

We conclude that this approach is radically changing the current practice of paying workers overtime, however it is noted that the jurisprudence of account is not a mandatory general law, it may be invoked in a specific labor trial, where claim this feature and should be ordered to pay the employer of it.

Which is why we consider that it would not be appropriate to change the current mode of payment, taking into consideration that this approach simply requires compliance with the Court invoked.

We hope this information is helpful and took the opportunity to get their orders in case of any comments or questions.

Attentively,

Ruben Isaac Corral Manjarrez