



We would like to introduce a new monthly feature in our *Sector Connector* that we think may be of assistance to many of you: Maryland Nonprofits' 501(C)SI. **That's right, our staff experts will be conducting special investigations into your toughest questions!**

Many of our members call Deb Jung, Maryland Nonprofits General Counsel; Kenna Forsyth, the organization's Librarian; and Nancy Hall, the resident expert in financial matters, as well as organizational start up issues. Between the three of us, we answer most of the technical assistance questions that you throw our way, and do our best to get back to you in a timely manner.

We will disguise the organization or questioner, and promise never to print the embarrassing questions, only the ones that have educational value to the whole sector. But, we felt that all of you who receive the Sector Connector can benefit from the questions that other members ask us. So, without further ado, the inaugural question is:

Dear Deb:

When can we pay a salaried person on an hourly basis? We have salaried employees who work in production. That is their primary job. If we ask one of them to perform a non-exempt job, can we pay them hourly? At what rate?

Let's say an employee, "Bob", makes \$30,000 a year. If he stays to perform a nonexempt job and the work is within his "normal" 40 hours do we pay him his hourly rate of \$14.43? Or should we NOT pay him because he is in effect being paid twice?

If he works more than 40 hours do we pay overtime?

Thanks for the advice.

**Janet Smith
Executive Director
Nonprofit for a Wonderful Life**

Dear Janet:

If your employee's primary **duties** establish him or her as an exempt employee, then you can pay the employee their regular salary and pay the employee for the extra hours they worked. **Primary duties** means that the most important duties the employee performs qualify as exempt duties, that the employee is relatively free from direct supervision, and that the employee is paid more on a salary basis than employees who perform nonexempt work. In a Department of Labor Opinion Letter dated March 17th, 2005, the Department also noted that the regulations point out that, "The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than 50% of their time performing exempt work will generally satisfy the primary duty requirement. Time alone, however, is not the sole test, and nothing in this section requires that exempt employees spend more than 50% of their time performing exempt work."

When the employee's primary duties of the combined exempt and nonexempt jobs still qualify as exempt work, there are no special pay issues. In an Opinion Letter dated February 25th, 1997, the Department of Labor stated that there is no requirement to pay an exempt employee anything for taking on additional duties. Thus, any method the employer decides to use to compensate the employee for the extra hours is acceptable, so long as it does not interfere with the employee's guaranteed salary.

Accordingly, you can pay the employee his or her regular salary for the exempt position and pay him or her an hourly rate for the additional nonexempt work. Of course, the exempt salary must be at least \$455 a week to qualify the employee as an exempt employee. Paying the exempt employee additional compensation beyond his regular salary for performing nonexempt work will not compromise his exempt status, as long as the employee's primary duties remain exempt.

If the employee's primary duties are non-exempt, you must pay the employee overtime compensation for any hours worked over 40 hours a week, even if the overtime hours are worked in an exempt job. You can calculate the overtime rate by using the weighted average of the two straight-time pay rates for the jobs, or the employee and employer can, by means of a written agreement, decide that the overtime rate will be based upon the straight-time rate for the work performed in the overtime hours.

Feel free to contact me if you would like to discuss this further or you have more questions.

Sincerely,
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