



# County Technical Assistance Service

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## Fixed Salary for Fluctuating Hours

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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## Table of Contents

Fixed Salary for Fluctuating Hours.....	3
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## Fixed Salary for Fluctuating Hours

**Reference Number:** CTAS-168

The FLSA authorizes the payment of a fixed salary for fluctuating hours. The regulations<sup>[1]</sup> provide that a salaried employee may have hours of work that fluctuate from week to week and the salary may be paid pursuant to an understanding with the employer that the employee will receive such fixed amount as straight time pay for whatever hours the employee is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding between the parties that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, this kind of salary arrangement is permitted by the FLSA. The amount of the salary must be sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour the employee works. The employee must also receive extra compensation, in addition to the regular salary, for all overtime hours worked at a rate not less than one-half his or her regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because the hours have already been compensated at the straight time regular rate under the salary arrangement. The fixed salary can cover hours in excess of 40 hours a week, provided the employee has a clear understanding that the salary constitutes straight-time pay for all hours worked and the straight-time pay is equal to or exceeds the required minimum wage of \$7.25. The fixed salary must be large enough to insure that the employee's hourly earnings from the salary will not fall below minimum wage. The employee must understand that the salary covers whatever hours the job may demand in a particular workweek. The employer must pay the salary even though the workweek is one in which a full schedule of hours is not worked. Also, it should be noted that employees who are paid under the rules for fluctuating workweeks are not eligible to receive compensatory time in lieu of cash overtime payments.

For an employee whose hours of work fluctuate from week to week and who is paid a fixed salary with the clear understanding that the salary constitutes straight-time pay for all hours worked, the regular rate of pay will vary from week to week. The regular rate is obtained for each week by dividing the fixed salary by the number of hours worked in that week, but cannot, of course, fall below the required minimum hourly wage in any week. Since straight-time compensation has already been paid for all hours worked by way of the fixed salary, the employee is entitled to receive overtime pay for each hour worked over 40 in the workweek at a rate of not less than one-half this straight-time compensation. As an example, consider the employee who is compensated on a fluctuating workweek basis at a weekly salary of \$500. If during the course of four weeks the employee works 40, 44, 50 and 48 hours, the regular hourly rate of pay in each of these weeks is \$12.50, \$11.36, \$10.00 and \$10.42. Since straight-time pay for all hours worked has already been paid by the fixed salary, only an additional half-time pay is due for each hour over 40 in each week. For the first week the employee is due \$500.00; for the second week \$522.72 (\$500 plus 4 hours at \$5.68); for the third week \$550.00 (\$500.00 plus 10 hours at \$5.00); for the fourth week \$541.68 (\$500 plus eight hours at \$5.21).

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[1] These regulations are found at 29 C.F.R. § 778.114.

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