



OBBBA: What employers need to know (and why they should care...)

February 12, 2026





Agenda

- Why employers should care – the weekend warrior with the calculator...
- Review of the OBBBA “No Tax on OT” Law including common misconceptions by employers and employees
- 2025 Employer Reporting Challenges & How to field questions from employees who are now filing their own taxes
- 2026 Employer Reporting Requirements

Legislative Update:

- EEOC withdrew guidance on harassment.
- Why and what does this mean?

The Weekend Warrior with a Calculator....

- Educational issue – the news is at the 30,000-foot level and not in the “weeds” – employees don’t understand.
- Employees have an expectation that might not be met with estimates. They are going to do their own calculations.
 - The weekend warrior with a calculator and access to Google...
- Plaintiffs (employee) bar opportunity: “Do you disagree with you OT or tip calculation?”
 - Looking not at whether amount is right – but underlying calculations and way OT is paid
 - Looking at whether tips (vs. service charges) are appropriate
 - Class action opportunity
- Conversely this is YOUR opportunity too!

Key Rules- No Tax on OT

- Passed in July of 2025 but retroactive to January 1, 2025.
 - Expectations unknown for first six months
 - Government shutdown delayed guidance
- The amount of overtime that is deductible is capped at \$12,500 (\$25,000 if married filing jointly). Phases out starting at \$150,000/\$300,000.
- The deduction only applies to the “premium” portion of the overtime paid.
 - For example, if overtime is paid at 1.5 times the employee's regular hourly rate, only the premium of .5 is deductible. In this scenario, an employee whose regular rate is \$20 an hour, would have an overtime rate of \$30 an hour – but only the premium portion (the additional “.5” or \$10 an hour) would be deductible.

Key Rules- No Tax on OT (con't)

- Only overtime that is legally required to be paid under the Federal law known as the Fair Labor Standards Act (“FLSA”) is deductible. Generally, this is overtime that is paid after an employee works over 40 hours in a single work week.
 - Work week should be defined and should not change.
- The IRS does **not** count overtime that is paid pursuant to:
 - a more generous collective bargaining (union) agreement,
 - a more generous company policy
 - employers who pay double time,
 - employers who including vacation and sick time (non-worked hours) into their calculation for OT.
 - employer who pay for "show up," "on-call" or other similar pay where no work is actually performed.
 - employers who pay a shift differential/premium for certain (off less favorable) shifts – such as nights, weekends, holdiays.
 - State law requirements that mandate daily or more generous overtime than required by Federal law.
 - Alaska, California, Colorado, Florida, Nevada, and Oregon
- Exempt employees cannot deduct OT (in most cases this means salaried employees)

How Does an Employee Claim the Benefit?

- The employees' W-2 MAY show the amount of qualified overtime premium (optional) for 2025 (Box 14). It is REQUIRED to show it in 2026 (Box 12).
 - What if OT premium amount is on this year's W-2 and employee claims a different amount as a deduction?
- Good faith/reasonable standard for 2025; higher standard for 2026.
- Employees take this information to their tax provider or review it (weekend warrior). This amount is deducted from their taxable income which will decrease the amount of taxes owed (i.e. increase their refund)

ISSUES EMPLOYERS ARE FACING WITH THIS LAW

Issue #1: EDUCATION of EMPLOYEES: It is NOT simply “NO TAX ON OT” as explained in the news. The law as written is actually “Not Tax on the Overtime Premium paid to employees for hours worked over 40 in a workweek.”

- Employees will not get a tax refund for the total overtime they see on their paystub. It’s a far lesser amount. It’s just the premium.
- The deduction only applies to Federal Income tax. Does not apply to Social Security, Medicare, or any state or local taxes.
- Caps/phase outs.
- Many employers pay “OT” for working on Sundays, Holidays, or undesirable shifts. If these amounts were NOT hours worked over 40 then these amounts won’t count. Employers must be able to explain this to their employees **AND** they must have a method for recalculating OT premium in 2026 to **NOT** include these amounts.

ISSUES EMPLOYERS ARE FACING WITH THIS LAW (con't.)

ISSUE #2: This law was enacted in July of 2025 and made retro-active to January 1, 2025. This means that employees can claim the tax deduction on 2025 taxes BUT employers had no mechanism in place to do all of these calculations.

- The IRS recognized this and put out LATE guidance in November of 2025 stating that employers and employees could make a “reasonable good faith effort” in reporting this information to the IRS. The IRS issued 30 pages of guidance for employees on various methods they could use to calculate estimated OT premium
- The guidance also provided penalty relief to employers for failing to provide this estimate on the employees’ W-2 for 2025 but they “encouraged” employers to provide pay statements, documentation, or some method to assist employees.
- **Employer Conundrum-** Do I provide a good faith estimate that employees will undoubtedly question OR do I provide nothing and have EVERY employee ask me what to do?

ISSUES EMPLOYERS ARE FACING WITH THIS LAW (con't.)

ISSUE #3: You now have employees going to file their taxes. They do not understand what the amount means. They just know that it is LESS than what the OT reads on their paystub reads. They are coming to you.

Added Complexities

- On-line tax services and other tax advisors are providing various forms of information--- some indicating that the employee should just take 1/3 of their total OT even in cases where this amount would be grossly over-stated.
- No matter what this amount was truly only an “estimate” which is all that the employer could really provide.

Opportunity for Employers (and Risk)

What the Plaintiff's Bar is looking for:

- Miscalculation – not just of the OT premium – but how you calculate OT when you have shift differentials, more generous employer policies/CBAS, state OT, etc.

Opportunity for Employers:

- Make sure you know the rules – good time (“excuse”) to change methodology if doing it wrong.
 - Let's look at some common mistakes to know if you're doing it right or wrong.

Common Mistakes:

- Do you know your workweek?
 - Common misperception – time is NOT OT if worked on a weekday – only OT if worked on a weekend (or evening/night/holiday)
- It doesn't matter if the time is worked on Sunday or Wednesday (night/evening/holiday) – it matters what workweek it is in.
- Look at this example. Employer has the right to set the workweek. The employer decided the workweek is Monday midnight to Sunday at 11:59 p.m.
 - Employee works as follows:
 - Friday – 16 hours
 - Saturday – 16 hours
 - Sunday starts shift at 8 p.m. – ends shift at 8 a.m. Monday for a total of 12 hours.
 - Tuesday – 8 hours
 - Wednesday – 16 hours
 - Thursday – 16 hours
 - Do we have any overtime and, if so, where/how many hours?

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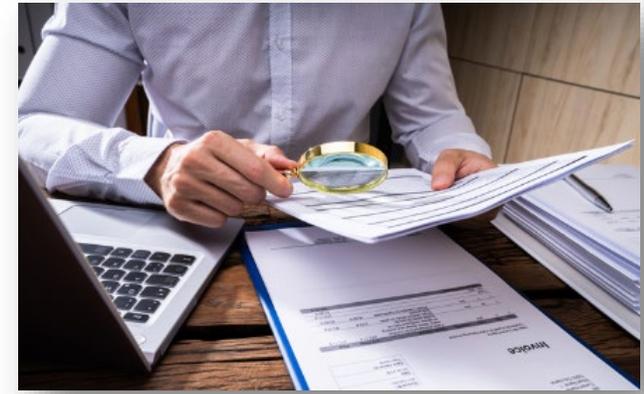
Common Mistakes (cont.)

What if the employee works the following:

- Monday – 8 hours
- Tuesday – 8 hours
- Thursday – 8 hours
- Friday – 8 hours
- Saturday – 8 hours

Do we have overtime?

Caveat: Some states require OT for more than 8 or 10 hours in a day or more than 6 days in a row.



Common Mistakes (con't.)

So what happens if you have state OT or a shift differential or a more generous policy/CBA?

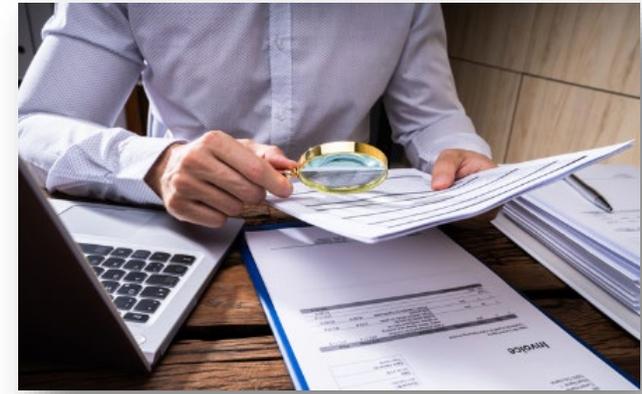
Average weighted OT

Same workweek as above.

Works M-F 8 hours/day for \$10/hour.

Works Saturday 8 hours for \$12/hour.

Do we have OT and if so, what is the OT rate, so that we can calculate the OT premium.



Common Mistakes (cont.)

Answer:

We have 8 hours of OT. We need to find the average weighted regular rate:

- 40 hours at \$10/hour = \$400

- 8 hours at \$12/hour = \$96

(The “extra” \$2 on this shift could be due to a shift differential, state OT, CBA, policy, prevailing wage, etc.)

- Total regular time paid is \$496.

- Average weighted rate is $\$496/48$ hours = \$10.33/hour

THE OT RATE IS 1.5 times \$10.33 or \$15.5. The premium is \$5.17.



Tips:

Know the difference between a service charge and a tip.

Service charge does not count for the deduction OR for tip credits to pay employees sub-minimum wage.

Example: Fee to cover living wage; automatic “gratuity” for tables of 8 or more.
Customer must have unfettered discretion on whether to leave any tip and the amount of the tip.

OTHER RESOURCES

- <https://www.irs.gov/newsroom/treasury-irs-provide-guidance-for-individuals-who-received-tips-or-overtime-during-tax-year-2025>
- <https://www.irs.gov/pub/irs-drop/n-25-69.pdf> (30 Page guidance for employees with calculation examples)



Thank You