



# MEMORANDUM

*PRIVILEGED AND CONFIDENTIAL*

TO: SITE MEMBERS

FROM: MIKE KAEMMERER & COOPER LOHKAMP

DATE: 7/22/2025

RE: BIG BEAUTIFUL BILL NO TAX ON OVERTIME – W-2 REPORTING CHANGES

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With the passage of the Big Beautiful Bill (BBB), and its No-Tax on Overtime Provision, there are changes as to what must be reported on an employee's W-2 in 2025 onward.<sup>1</sup>

The No Tax on Overtime provision amends the IRS code's section on W-2 reporting to require that "qualified overtime compensation" is now included.

The BBB defines Qualified overtime as follows:

For purposes of this section, the term 'qualified overtime compensation' means **overtime compensation paid to an individual required under section 7 of the Fair Labor Standards Act of 1938 that is in excess of the regular rate** (as used in such section) at which such individual is employed.

The bold language above indicates the qualified overtime which must be reported includes only that which is required under the Fair Labor Standards Act (FLSA).

Section 7 of the FLSA, or 29 USC 207, is the FLSA section which sets forth statutorily required overtime. 29 USC 207(a)(1) requires in general that employees receive at least 1.5x of their normal pay for each hour worked over 40 hours of work in a workweek.

A question arises whether the overtime provided pursuant to a CBA—which happens to be more generous than statutory overtime—must be reported on an employee's W-2.

Consider the following examples:

1. Q: Employee works 10 hours on Monday, 11 hours on Tuesday, and is rained out the rest of the week. Per the Labor Agreement he receives 2 hours overtime

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<sup>1</sup> We expect the IRS to release regulations which further explain the new W-2 reporting requirements especially considering the No Tax on Overtime Provision directs that a new section, 26 U.S.C. § 225, be added to the IRS code, and this section includes the following subpart:

“(f) Regulations. --The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance to prevent abuse of the deduction allowed by this section.”

Monday and 3 hours on Tuesday. Are those overtime hours tax free? A: No because he did not have more than 40 hours of work in the week.

2. Q: The employee is off on Memorial Day but then because the Company is busy, works 9 hours on Tuesday, Wednesday, Thursday, Friday and per the Company's policy they will pay overtime after 8 hours in a day. Thus the employee received 40 straight time hours (counting the holiday pay) and 4 hours overtime – are those 4 hours tax free? A: No the employee did not work more than 40 hours in that week. The employee in that scenario only worked 36 hours.
3. Q. A labor contract calls for double time for work on Sundays and time and a half for all work on Saturdays, regardless of what the employee worked that week. If an employee works time and a half on Saturday and/ or double time on Sunday are those “overtime” hours tax free. A: No, the employee did not work more than 40 hours either week and only received the additional pay because of the language a given Labor Agreement or Company Policy.

The key to these examples is that for overtime to be tax free, the employee must work more than 40 hours of work in a given week.

We will continue to monitor the coming IRS regulations and inform you if they instruct employers to calculate qualified overtime compensation differently.

Please don't hesitate to reach out if you'd like to discuss.

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