

How bonuses affect the FLSA regular rate of pay

Sometimes employers decide to pay lump-sum or signing bonuses to workers instead of offering traditional cost-of-living wage increases. Some types of bonuses are included in the regular rate of pay and boost overtime premium pay, and some are not included.

Discretionary Bonuses

An incentive bonus, like other discretionary bonuses or bonuses not related to an employee's work hours, may be excluded from the regular rate of pay. Therefore, this type of bonus doesn't raise the rate of overtime pay that is due to non-exempt workers under the Fair Labor Standards Act (FLSA).

Non-Discretionary Bonuses

Normally, bonuses must be included in the regular rate of pay if they are promised to non-exempt employees, because they are considered non-discretionary bonuses. The U.S. Department of Labor's (DOL) regulations state, "Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay."

Including Overtime in the Bonus

If the employer calculates the bonus as a percentage of all hours worked or all wages paid, including overtime, the employer can avoid including bonuses in the calculation of overtime pay. The bonus includes overtime wages in the original bonus distribution and nothing more is due to the employee.

The DOL's Non-Enforcement Policy

The DOL has a non-enforcement policy that applies to the bonus-based overtime issue, a policy that can change without notice. If the bonus is not related to hours worked, production or efficiency, but for some reason fails to qualify for exclusion, the DOL will warn the employer of a possible problem, but will not be directed by the DOL to pay damages. Many employers will not benefit from this policy because the bonuses they pay are related to hours worked, or related to production or efficiency. The DOL's non-enforcement policy doesn't protect against employee lawsuits brought under state wage and hour laws.

Remember, once an employer pays a bonus, more money may be owed to the employee for overtime pay.

For more information, contact CTSI at 303-861-0507.