

Fact Sheet #56C: Bonuses under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information regarding bonuses and the regular rate of pay under the FLSA for non-exempt employees. For information regarding nondiscretionary bonuses and employees employed as executive, administrative, professional, or outside sales employees, who are exempt from the FLSA's minimum wage and overtime requirements, see [Fact Sheet #17U](#).

The FLSA requires that most employees in the United States be paid at least the federal [minimum wage](#) for all hours worked and [overtime pay](#) at not less than time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. [Fact Sheet #22](#) provides general information about determining hours worked.

The amount of overtime pay due to an employee is based on the employee's regular rate of pay and the number of hours worked in a workweek regardless of whether the employee is paid on a piece rate, day rate, commission, or a salary basis. [Fact Sheet #23](#) provides additional information regarding overtime pay.

A bonus is a payment made in addition to the employee's regular earnings. Under the FLSA, all compensation for hours worked, services rendered, or performance is included in the regular rate of pay. The Act provides an exhaustive list of payments that may be excluded from the regular rate of pay. Specifically, 29 U.S.C. §§ 207(e)(1) and (3) contain statutory provisions which address the excludability of certain bonuses. Unless specifically noted, payments that are excluded from the regular rate may not be credited towards overtime compensation due under the FLSA. Information regarding additional exclusions from the regular rate is available in [Fact Sheet #56A](#).

Discretionary Bonuses

Discretionary bonuses are excludable from the regular rate of pay. A bonus is discretionary only if *all* the statutory requirements are met:

- The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine whether to pay the bonus;
- The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine the amount of the bonus; and
- The bonus payment is not made according to any prior contract, agreement, or promise causing an employee to expect such payments regularly.

Examples of some common bonuses that may be excludable discretionary bonuses if they meet the statutory requirements include:

- Bonuses for overcoming a challenging or stressful situation;
- Bonuses to employees who made unique or extraordinary efforts not awarded according to pre-established criteria;
- Employee-of-the-month bonuses;
- Severance bonuses; and

- Referral bonuses to employees not primarily engaged in recruiting activities (subject to additional criteria).¹

The label assigned to the bonus and the reason for the bonus do not conclusively determine whether the bonus is discretionary. While a bonus may be labeled discretionary, if it does not comply with the provisions of the statute, then the bonus is not an excludable discretionary bonus. The determination must be made on a case-by-case basis depending on the specific circumstances.

A discretionary bonus may not be credited towards overtime compensation due under the FLSA.

Nondiscretionary Bonuses

A nondiscretionary bonus is a bonus that fails to meet the statutory requirements of a discretionary bonus. Nondiscretionary bonuses are included in the regular rate of pay, unless they qualify as excludable under another statutory provision (see below).

Examples of nondiscretionary bonuses that must be included in the regular rate include:

- Bonuses based on a predetermined formula, such as individual or group production bonuses;
- Bonuses for quality and accuracy of work;
- Bonuses announced to employees to induce them to work more efficiently;
- Attendance bonuses; and
- Safety bonuses (i.e., number of days without safety incidents).

Such bonuses are nondiscretionary because the employees know about and expect the bonus. The understanding of how an employee earns one may lead to an expectation to receive the bonus regularly. The fact that the employer has the option not to pay the promised bonus does not make the bonus discretionary.

Gifts and payments in the nature of gifts on special occasions

Sums paid as gifts and payments in the nature of gifts made on holidays or on other special occasions as a reward for service may be excluded from the regular rate, provided the amounts of the gifts (or payments) are not measured by or dependent on hours worked, production, or efficiency.

Certain longevity bonuses are excludable from the regular rate as gifts when given as a reward for service or tenure and provided the bonus payments are not made pursuant to a collective bargaining agreement or a city ordinance or policy.²

Sign-on bonuses given to employees with or without clawback provisions may be excluded as gifts or may be excluded under 29 U.S.C. § 207(e)(2) as other payments that are not compensation for hours of employment, or otherwise tied to quality or quantity of work performed. However, sign-on bonuses paid pursuant to a CBA, ordinance, or policy with a clawback provision may not be excluded as a gift and must be included in the regular rate.

¹ Referral bonuses may be discretionary, provided the following criteria are met: (1) employee participation is strictly voluntary; (2) the employee's recruitment efforts do not involve significant time; and (3) the activity is limited to after-hours solicitation done only among friends, relatives, neighbors and acquaintances as part of the employee's social affairs.

² Like all excludable gifts, a longevity or sign-on bonus is an excludable gift only if the bonus payment is not paid pursuant to a contract and is not so substantial that it can be assumed that employees consider it a part of the wages for which they work.

Calculating Overtime Pay Based on the Regular Rate

Overtime pay is calculated based only on payments to the employee that are required to be included in the regular rate of pay. The following steps can be used to calculate the regular rate of pay and overtime compensation due when the employee is paid on an hourly, piece rate, day rate, job rate, commission, or salary basis.

Step 1: Total compensation for the week (except the statutory exclusions) ÷ Total hours worked in the week = Regular Rate per hour for the week (must be at least the federal minimum wage)

Step 2: Regular Rate x (.5) = Half-time premium for each overtime hour (note the straight time for the overtime hours is included in Step 1)

Step 3: Half-time premium pay rate x Overtime hours = Overtime compensation due

Example A: Nondiscretionary bonus

A non-exempt employee is paid \$10.00 per hour and receives a \$50.00 bonus in a particular week that was promised for helping to produce a special order for a customer two weeks earlier than previously scheduled. The employee worked 43 hours that week. The following is an example of how to compute overtime pay based on the employee's regular rate:

\$10.00 per hour x 43 hours = \$430.00 (total compensation for straight time)

\$430.00 + \$50.00 (bonus) = \$480.00 (total compensation)

\$480.00 ÷ 43 hours = \$11.16 (regular rate)

\$11.16 x .5 = \$5.58 (half time premium pay rate)

\$5.58 x 3 overtime hours = \$16.74 (overtime pay due)

\$480.00 + \$16.74 = \$496.74. (total due)

Example B: Shift differential plus nondiscretionary bonus

A non-exempt employee is paid \$15.00 per hour plus an evening shift differential of \$1.00 per hour for all hours worked during an evening shift. The employee worked 45 hours, 30 of which were during evening shifts, in a week. The employee also earned a \$100.00 bonus that week that was promised for helping to produce a special order for a customer two weeks earlier than previously scheduled. The following is an example of how to compute overtime pay based on the employee's regular rate:

\$15 per hour x 45 hours = \$675 (compensation for straight time at \$15 hourly rate)

\$1.00 x 30 hours = \$30 (shift differential for the evening shifts)

\$675 + \$30 (shift differential) + \$100 (bonus) = \$805 (total compensation)

\$805 ÷ 45 = \$17.89 (regular rate)

\$17.89 x .5 = \$8.95 (half time premium pay rate)

\$8.95 x 5 overtime hours = \$44.75 (overtime pay due)

\$805 + \$44.75 = \$849.75 (total due)

Example C: Nondiscretionary bonus and an excludable discretionary bonus

A non-exempt employee is paid \$10.00 per hour and receives a \$50.00 bonus that was promised in a particular week for helping to produce a special order for a customer two weeks earlier than previously scheduled. The employee also receives a \$25.00 on-the-spot bonus that week (because it was not preannounced to the employee, it is an excludable discretionary bonus). The employee worked 43 hours that week. The following is an example of how to compute overtime pay based on the employee's regular rate:

$\$10.00 \text{ per hour} \times 43 \text{ hours} = \430.00 (total compensation for straight time)
 $\$430.00 + \50.00 (excludes \$25.00 discretionary bonus) = \$480.00 (total compensation)
 $\$480.00 \div 43 \text{ hours} = \11.16 (regular rate)
 $\$11.16 \times .5 = \5.58 (half time premium pay rate)
 $\$5.58 \times 3 \text{ overtime hours} = \16.74 (overtime pay due)
 $\$480.00 + \$16.74 + \$25.00$ (discretionary bonus) = \$521.74 (total due)

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866- 4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at <https://www.dol.gov/agencies/whd/state/contacts>.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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