

Legislative Update DECEMBER 2019*

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UNITED STATES DEPARTMENT OF LABOR ISSUES FINAL RULE TAKING EFFECT ON JANUARY 15, 2020 CONCERNING REGULAR RATE OF PAY CALCULATIONS

Under the Fair Labor Standards Act, overtime for nonexempt employees must be calculated at the rate of one and one-half times an employee's "regular rate of pay." When calculating overtime pay, employers must include "all remuneration for employment paid to, or on behalf of, the employee," except for specific categories that are excluded from the calculation by law including:

- Premium payments for work performed outside an employee's regular work hours
- Extra compensation paid according to a private agreement or collective bargaining
- Income derived from grants or options
- Payments made when no work is performed, such as vacation or holiday pay
- Payments for traveling expenses
- Gifts
- Discretionary bonuses
- Irrevocable benefits payments

According to the U.S. Department of Labor, this Final Rule clarifies that employers are permitted to exclude the following items from their regular rate of pay calculations:

- Wellness programs, onsite specialist treatments, gym access and fitness classes, parking, employee discounts on goods and services, certain tuition benefits, and adoption assistance
- Unused paid leave, including paid sick leave and paid time off
- Certain penalties employers must pay under state or local scheduling laws
- Business expense reimbursement for items such as cellphone plans, credentialing exam fees, organization membership dues, and travel expenses that do not exceed the maximum travel reimbursement under federal government travel expense rules
- Certain sign-on and longevity bonuses
- Office coffee and snacks given to employees as gifts
- Discretionary bonuses (labels alone do not determine whether bonuses are discretionary)
- Contributions to benefit plans for accidents, unemployment, legal services and other events that could cause a financial hardship or expense in the future.

Source: USDOL, SHRM

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