



## Overtime on Bonuses

Awarding bonuses to employees for attendance, productivity, etc. is a common practice. However, many employers don't realize that they must pay overtime on those bonuses.

Most employers recognize that overtime must be paid at time-and-one half the employee's regular rate of pay. However, many employers don't realize that the [regular rate](#) can include bonuses paid to employees. Depending on the type of bonus, the Fair Labor Standards Act requires that the amount of the incentive be included in the employee's "regular rate" for the purpose of calculating overtime.

The [Fair Labor Standards Act](#) divides bonuses into two categories: Discretionary and non-discretionary.

Discretionary bonuses do not have to be included in the regular rate of pay when calculating overtime. They must meet the following criteria

- Employer retains discretion as to payment
- Employer retains discretion as to the amount
- Employer retains discretion until near the end of the period which it covers
- **The bonus must not be paid pursuant to any prior contract, agreement or promise**

Bottom line: if an employee expects the bonus, it is probably not discretionary and the company must pay overtime on the value of that bonus.

The FLSA requires that **non-discretionary** bonuses be factored into the overtime rate. Bonuses that are contractually required, agreed upon, or promised to an employee must be included in the regular rate of pay. These bonuses include:

- Attendance
- Productivity (individual or group)
- Quality of work
- Length of service
- Safety

If there is an expectation on the part of the employee that he or she will receive a bonus based on his or her performance, then that bonus is likely considered non-discretionary.

## Calculating Overtime on Bonuses:

The simplest approach is to pay the bonus as a percentage of all monies earned including overtime payments. Because the bonus is calculated to include overtime earnings, no special calculations are required. For example, you pay an individual for a productivity bonus earned during a week in which overtime was earned, but the bonus is based on a percentage of gross earnings.

The employee worked 46 hours during the week.

40 hours x \$10 (regular rate) = \$400  
6 x \$15 (overtime or 1.5 x \$10) = \$90  
Gross earnings to the employee are \$490.  
Bonus is 10% of gross earnings: \$490 x 10% = \$49  
Total paid to employee: \$539

In this example, no additional calculation is required for purposes of calculating overtime.

However, if the bonus is paid as a “flat dollar” amount, a new calculation is required.

### Example 1:

When the bonus is earned in the same week it is paid, the calculation is relatively simple. Total earnings is divided by total hours to arrive at the regular rate of pay for that week. Because this calculation factors in the straight time portion of time-and-one-half, the organization would only owe half-time for the overtime hours worked.

For example, an employee works 56 hours during the week and is paid an attendance bonus of \$50.

56 hours x \$12 = \$672 + \$50 bonus = \$722 (total earnings for the week)  
\$722 ÷ 56 hours = \$12.89 per hour (regular rate of pay)  
\$12.89 ÷ ½ = \$6.45 (half-time rate)  
\$12.89 + \$6.45 = \$19.34 (overtime rate)  
\$12.89 x 40 straight time hours = \$515.60  
\$19.34 x 16 overtime hours = \$309.44  
Total owed to employee: \$515.60 + \$309.44 = \$824.04

### Example 2:

When the bonus is earned over a period of time (year, quarter, month, etc.) it becomes a little more complicated. If you can determine the portion of the bonus earned in a particular overtime week, you would do the same basic calculation as above.

However, if you can't determine the exact amount of the bonus for a specific week, you would pro-rate the bonus equally over the period it was earned and make the overtime calculation based on that amount. For example, a production bonus of \$1000 is paid at the end of a 13-week quarter if the target is met.

Employee works overtime in two out of the thirteen weeks.

- $\$1000 / 13 = \$76.92$  bonus for each week
- $\$76.92 / 42 \times 0.5 \times 2$  OT hours = \$1.83
- $\$76.92 / 52 \times 0.5 \times 12$  OT hours = \$8.88
- $\$1000 + \$1.83 + \$8.88 = \$1010.71$

Properly calculating overtime can sometimes be a challenge for employers. It is highly recommended that questions about proper overtime calculation be directed to an employment law attorney or an HR professional.

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