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Insights

DOL Guidance Clarifies When Percentage-Based Bonuses May Avoid Overtime Recalculations

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The U.S. Department of Labor (DOL) recently issued guidance addressing when employers must include nondiscretionary bonuses in an hourly or non-exempt employee's regular rate of pay under the Fair Labor Standards Act (FLSA). The guidance is important for employers that offer bonus programs tied to employee earnings because, if properly structured, certain percentage-based bonuses may avoid later overtime recalculations. Although DOL opinion letters are not binding legal precedent, they provide useful guidance for employers navigating difficult wage and hour issues.

Calculating a non-exempt or hourly employee's "regular rate" can be challenging. As a general rule, an employee's regular rate is calculated by totaling the employee's compensation for the workweek and dividing that amount by the total number of hours worked during that week. Employers then must pay overtime at one and one-half times the employee's regular rate for all hours worked over 40 in a workweek.

Must Bonuses Generally Be Included When Calculating an Employee's Regular Rate?

It depends on the type of bonus. A discretionary bonus generally does not have to be included when calculating an employee's regular rate of pay. A bonus is discretionary only if both the amount of the bonus and whether to pay the bonus at all are determined in the employer's sole discretion, and the employee was not promised the bonus in advance.

By contrast, a nondiscretionary bonus must be included when calculating an employee's regular rate. This can complicate payroll administration because the amount of a nondiscretionary bonus often is not determined or paid until after the workweek or workweeks in which the bonus was earned. As a result, employers may initially calculate overtime without including the bonus.

Once the amount of a nondiscretionary bonus is determined, the employer generally must allocate the bonus back over the weeks in which it was earned, recalculate the employee's regular rate for those weeks, and pay any additional overtime due as soon as practicable based on the increased regular rate.

What Does the DOL Guidance Say?

Opinion Letter FLSA 2026-6 addresses bonuses calculated as a percentage of an employee's total earnings. According to the DOL, when a bonus is properly structured as a percentage of total earnings, including overtime compensation, employers generally do not need to go back and recalculate the employee's regular rate and overtime pay after the bonus is paid. In that circumstance, the bonus already proportionally accounts for overtime compensation, simplifying payroll administration and avoiding the additional recalculations often required for other types of nondiscretionary bonuses.

The Opinion Letter does not mean that all bonus programs are exempt from overtime recalculations. The DOL emphasized that the bonus must be based on the employee’s total earnings, including overtime compensation, to qualify for the exclusion. The formula cannot reduce or dilute overtime compensation, and employers cannot structure bonus plans to avoid overtime obligations. In addition, amounts excluded from the regular rate—such as certain discretionary bonuses, gifts, expense reimbursements, or benefit-plan contributions—generally should not be included in the earnings used to calculate the bonus.

Key Takeaway

The DOL’s guidance confirms that properly structured percentage-of-total-earnings bonuses may eliminate the need for later overtime recalculations. Employers should review bonus plans carefully to confirm compliance with the FLSA before relying on this approach.

If you have questions about wage and hour issues, including what must be included in an employee’s regular rate of pay or an employer’s overtime obligations under the FLSA, please contact any member of the Labor and Employment team at Krieg DeVault LLP for additional insight or assistance.
