

Non-Discretionary Bonuses and Overtime Pay Calculations

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More employees than ever may be categorized as non-exempt when the new Department of Labor (“DOL”) salary requirement for exempt employees becomes effective on December 1, 2016. Many formerly salaried, exempt employees will be changed to non-exempt employees (either hourly or salaried) if their current salary is too far below the new minimum salary requirement. Given that, employers need to be cognizant of how bonuses earned by employees effects their overtime pay.

Under the law, any bonus that is non-discretionary in both the fact (i.e. the bonus is guaranteed if the employee meets certain qualifications) and in amount (i.e. the amount of bonus is pre-determined, either in dollar amount or as a certain percentage of some number such as sales or revenue) must be included in the employee’s regular rate of pay for overtime purposes.

Thus, an employee who earns a \$400 bonus due to the employee or the company meeting some goal or standard, and that \$400 was determined in advance of the employee earning it, must have that \$400 included in his or her regular hourly rate in order to determine overtime pay.

If the bonus is earned monthly, then the \$400 may be divided equally for all weeks worked that month, such that the employee has essentially earned an extra \$100 per month each week of the month.

If the employee worked overtime in one of those weeks, and was paid time and a half based on his or her regular weekly wage, the employer will have to go back and figure out what the overtime pay would have been if the \$100 was included in regular wage that week, and will then have to pay the difference to the employee.

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