



New FLSA Regular Rate Regulation Finalized **Rule Excludes Various Benefits From Rate Calculation**

Today, the U.S. Department of Labor ([DOL](#)) [announced](#) a [final rule](#) expected to be published on December 16 that will update the regular rate requirements for employees under the Fair Labor Standards Act ([FLSA](#)). The new rule clarifies which perks and benefits must be included in the regular rate of pay (which is used to calculate overtime rates), as well as which perks and benefits an employer may provide without including them in the regular rate of pay.

In the rule, DOL states that employers may *exclude* many types of benefits and payments from an employee's regular rate. These include:

- "the cost of providing certain parking benefits, wellness programs, onsite specialist treatment, gym access and fitness classes, employee discounts on retail goods and services, certain tuition benefits (whether paid to an employee, an education provider, or a student-loan program), and adoption assistance;
- payments for unused paid leave, including paid sick leave or paid time off;
- payments of certain penalties required under state and local scheduling laws;
- reimbursed expenses including cellphone plans, credentialing exam fees, organization membership dues, and travel, even if not incurred 'solely' for the employer's benefit; and clarifies that reimbursements that do not exceed the maximum travel reimbursement under the Federal Travel Regulation System or the optional IRS substantiation amounts for travel expenses are per se 'reasonable payments';
- certain sign-on bonuses and certain longevity bonuses;
- the cost of office coffee and snacks to employees as gifts;
- discretionary bonuses, by clarifying that the label given a bonus does not determine whether it is discretionary and providing additional examples and;
- contributions to benefit plans for accident, unemployment, legal services, or other events that could cause future financial hardship or expense."

The final rule also includes additional clarification about other forms of compensation, including payment for meal periods and "call back" pay.

The rule will take effect on January 15, 2020. DOL has published [answers](#) to frequently asked questions about the rule.

Please [contact](#) our office with any additional questions regarding the rule and the impact to your business.

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