

U.S. Department of Labor Redefines 'Regular Rate'

For the first time in over half a century, the United States Department of Labor (DOL) has revised the definition of "regular rate" under the Fair Labor Standards Act (FLSA). The revisions give employers greater clarity in calculating proper overtime compensation for employees.

Under the FLSA, employers are required to pay non-exempt employees 1.5 times their "regular rate" of pay for hours worked in excess of 40 during their work week. The "regular rate" is not just the employee's hourly wage, but must also include "all remuneration for employment" paid to the employee.

The FLSA provides certain, limited exceptions to this definition, which the DOL implemented through its regulations. Nevertheless, those regulations failed to take into account the variety of fringe benefits offered by contemporary employers that have a monetary value but are difficult to account for in the computation of an employee's regular rate. As a result, employers were often left wondering which benefits to include in the "regular rate" for overtime purposes and which could be excluded.

On January 15, 2020, however, new regulations that provide much-needed guidance took effect. The revised regulation lists specific benefits that can be excluded from the "regular rate" and thus do not need to be considered when calculating overtime. Those benefits include the following:

- Costs to the employer to furnish benefits such as parking spaces and on-site care from specialists such as chiropractors, massage therapists, physical therapists, personal trainers, and counselors
- Gym access, gym memberships, fitness classes, and recreational facilities
- Costs to the employer to provide wellness programs, including health risk assessments, biometric screening, weight loss programs, smoking cessation programs, financial counseling, and mental health wellness
- Discounts on employer-provided retail goods and services
- Tuition, including payments for an employee's current coursework (for both in-person and online courses) and student loan repayment programs
- Adoption assistance

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If you have any questions about these updates and how they may impact the calculation of your employees' overtime compensation, please contact Robert S. Driscoll, Katie D. Triska, or your Reinhart attorney.

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