

Overtime Help: Regular Rate Checklists and Policy Guidance

The following document contains three parts relating to overtime pay. The first two parts are alphabetical listings of the types of pay that are included (the first list below) and that are excluded (the second list below) from computing the regular rate. The final part of this document is a series of tips for setting up your overtime policy.

All payments given to an employee as remuneration for employment must be included in calculating the employee's regular rate, except those which the federal Fair Labor Standards Act specifically says may be excluded.

Of course, if a payment is not compensation for employment, then it is not a part of the employee's wages. On the other hand, if a payment is excludable by the FLSA, then it may be ignored when figuring the employee's regular rate and overtime pay, even though it is remuneration for employment.

This chart is not all-inclusive. Although it is an extensive listing of payments that will be confronted in payroll computations, any other payment that is remuneration for employment and not a statutory exclusion must be considered as wages, just as any other payment which qualifies for a statutory exclusion may be eliminated from the wage category.

(1) Employee payments that must be included in calculating regular rates

Absence pay if absence is:

1. for personal reasons
2. for Christmas shopping (unless customary in industry or area)
3. for visit with friend passing through town
4. to obtain mortgage on home

Board and lodging furnished by employer if not excluded under union contract.

Bonuses for:

1. accuracy of work
2. attendance
3. continuation of employment relationship
4. production
5. quality of work

Commissions

Contest prizes for:

1. attendance
2. cooperation
3. courtesy
4. efficiency
5. number of overtime hours worked
6. production
7. quality of work
8. sales stimulation

Guarantees paid to pieceworkers

Housing and lodging furnished by employer if not excluded under union contract

Incentive bonuses

Lump-sum overtime pay

Lunch expenses of employee paid by employer

Meals furnished by employer if not excluded under union contract

Merchandise furnished free at company stores (food, clothing, household articles)

On-call pay

Patent payments, if employer solicited invention

Piecework earnings

Production bonuses

Rent of employee's living quarters paid by employer if not excluded under union contract

Rest-period premiums (but only if they are paid more often than occasionally)

Salary increases:

1. current
2. retroactive

Shift differentials for

1. night shift
2. second shift
3. swing shift
4. third shift

Tips, up to 50 percent of statutory minimum wage

Transportation, not incident of employment, furnished by employer

Traveling expenses of employee to and from work which are paid by employer

Utilities furnished by employer for employee's personal use if not excluded under union contract

Wage increases:

1. current
2. retroactive

Wages for hours worked (whether productive or not), including:

1. commissions
2. day wages

3. hourly guarantees to pieceworkers
4. hourly wages
5. job wages
6. noncash wages
7. piecework earnings
8. salaries
9. shift differentials

(2) Employee payments that may be excluded in calculating regular rates

Absence pay for infrequent or unpredictable absences (see also idle-time pay) caused by:

1. funeral of family member
2. holiday
3. jury service
4. sickness
5. vacation

Board, lodging, or other facilities excluded under union contract

Bonuses:

1. Christmas
2. discretionary with employer
3. percentage of total wages

Call-back pay covering idle time

Daily overtime pay of any amount for:

1. hours in excess of 8
2. hours in excess of reasonable daily standard

Day-of-rest pay at time and one-half

Death benefits paid from welfare fund

Director's fees

Disability benefits paid from welfare fund

Disaster relief payments

Discretionary bonuses (discretionary with employer)

Expense reimbursements for:

1. equipment
2. material
3. tools which employer is required to furnish
4. travel expenses in connection with employer's business
5. uniforms which employer requires employee to wear

Gifts

Health and welfare plan contributions by employer

Holiday pay for:

1. idle time if equivalent to regular earnings
2. time worked if at time and one-half

Hospital expenses paid from welfare fund

Idle-time pay (see also Absence pay) due to:

1. call-back pay
2. machinery breakdown
3. show-up pay
4. supplies failing to arrive
5. weather conditions making it impossible to work

Insurance paid from welfare fund

Loan to employee which is not deducted from wages

Locker facilities

Medical care on the job

Medical services and hospitalization required by workmen's compensation laws

Parking space furnished by employer

Pension plan contributions by employer

Percentage-of-total-wage bonuses

Post-shift pay:

1. at time and one-half if full shift not exceeding 8 hours is not worked
2. of any amount if full shift is worked

Pre-shift pay at time and one-half for shifts not exceeding 8 hours

Prize given to employee for recommending a sales prospect

Profit-sharing payments qualifying under administrative regulations

Recreational facilities furnished by employer

Rest-period premiums (but only if they are paid occasionally)

Restroom facilities

Retirement benefits paid from welfare fund

Royalties

Saturday pay:

1. at time and one-half for Saturday work as such
2. of any amount if for excess daily or weekly hours

Savings plan payments qualifying under administrative regulations

Seventh-day pay at time and one-half

Severance pay

Show-up pay covering idle time

Sick pay

Sixth-day pay at time and one-half

Stock denoting contingent interest

Suggestion awards for suggestions that casually occur to employee and require no work

Sunday pay:

1. at time and one-half for Sunday work as such
2. of any amount if for excess daily or weekly hours

Supper money given to employee who works late

Talent fees paid to radio and television performers and announcers

Tips, if no agreement on wage status

Transportation incidental to employment

Traveling expenses of business trip by employee

Truck or car rental paid to employee for use of their conveyance

Tuition for independent schooling outside working hours

Vacation pay

Veteran's subsistence allowances

Voting time pay

Weekly overtime pay of any amount for:

1. hours in excess of statutory straight-time workweek
2. hours in excess of reasonable weekly standards

Welfare fund benefits received by employee:

1. death benefits
2. disability benefits
3. hospitalization
4. medical care
5. retirement benefits

Welfare plan contributions by employer made irrevocably to trustee or third person to provide:

1. death benefits
2. disability benefits
3. hospitalization
4. medical care

5. retirement benefits

Workers' compensation

(3) Overtime Policy Guidance

The following is a list of tips that you should consider when setting up your overtime policy.

- **Consider staggering work periods** in order to avoid overtime compensation otherwise required by the federal wage and hours law (FLSA). The FLSA does not prohibit staggered work periods. For example, weekly shifts can begin in one workweek and end in the following one so that the hours worked in excess of the statutory straight-time workweek fall in the following week, thereby taking them out of the overtime category for the first week.
- **Communicate your staggered workweek.** If you are going to adjust overtime pay to take advantage of the offsets the law provides, make that very clear in your policy and routinely communicate that information. Employees will expect time and one-half pay for all hours over 40. Unless the perception is addressed, employees may challenge the practice unnecessarily as well as feel a lack of candor on the part of their employer.
- **Don't treat overtime as a privilege.** Your policy should stress that overtime is not a benefit—it is only to be authorized when business demands it. In no instance should overtime be authorized solely at the request of the employee or awarded as a privilege.
- **Don't be casual about unreported time.** Prohibit in writing and enforce actively a prohibition against “casual work time” and unreported time. Pay for all time and discipline abusers immediately after the fact.
- **Don't unintentionally support unreported time.** Through management development and supervisory training, aim to dispel the belief that the “good” employee is the one who comes in a little early or stays a little late just to help out and does not report the time.
- **Have a clear policy on mandatory overtime.** If overtime is to be mandatory when requested, state that fact throughout the hiring process and include a statement to be signed by the employee acknowledging an understanding of the company policy regarding mandatory overtime. Even with such a policy, there may be occasions where certain mitigating circumstances, such as illness or death in the employee's immediate family, can and should be exceptions. Document all exceptions to policy.
- **Don't fail to include on-call pay in overtime calculations.** Pay for time during which an employee holds himself ready for call to work must be included in the regular-rate computation.
- **Don't average hours worked in two or more weeks.** Each workweek must be treated as a separate unit in computing pay.
- **Do not negotiate side agreements with employees to avoid paying overtime.** Employees cannot waive their rights to overtime compensation granted them by the federal law, except where the government supervises the voluntary payment of wages due or sues on behalf of the employees. Employees cannot agree that their overtime hours may be paid at a lower rate. Agreements to “kick back” overtime pay and agreements to conceal overtime hours are invalid. Even though employees have agreed to such arrangements, they can still recover the overtime pay specified in the FLSA, possibly by suing you at some point in the future.