



THE MANUFACTURERS' ASSOCIATION
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Understanding Hazard Pay

Prepared for The Manufacturers' Association for 4/2/2020 Conference Call

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Concern: If employers are using bonuses as incentives during Covid19, are they correctly calculating and paying employee according to the Fair Labor Standards Act or are businesses creating legal and financial exposure?

Concept: Using Hazard bonuses increases the hourly rate of pay for Overtime calculations.

Situation where scenario would likely apply: Where these 3 factors occurred in a single workweek:

- Non-Exempt employee, - Hourly employee
- Overtime- the employee **works more than 40 hours** in a regular 7 day work week
- Bonus in effect- like Hazard Pay

FAQs

Q. 1 How do you calculate Regular Rate?

The formula to compute the regular rate is:

Total compensation in the workweek (this includes hazard pay) ÷ Total hours worked in the workweek = **Regular Rate** for the workweek

<https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate>

Q.2 What is included in Regular Rate?

When calculating an employee's regular rate, all compensation received by the employee in a workweek must be included, including wages, **bonuses**, commissions, and any other forms of compensation. [29 CFR 778.109](#).

Q.3 Does the FLSA require hazard pay? No, but if you use it as an incentive make sure you include it in the regular rate.

“The [Fair Labor Standards Act \(FLSA\)](#) does not address the subject of hazard pay, except to require that it be included as part of a federal employee's regular rate of pay in computing the employee's overtime pay. “ <https://www.dol.gov/general/topic/wages/hazardpay>



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Q. 4 What is a Non-Discretionary Bonus?

Bonus that you pay your employees “for working”. (examples shift differentials, attendance bonuses, hazard pay, commissions sales bonuses, production bonuses)

“A bonus is nondiscretionary, if the employer has created an expectation of payment and is no longer free to determine the timing or amount of payment without breaching legal or contractual agreements with its employees. Nondiscretionary bonuses are often based on employee or group performance. Performance can be measured by meeting a specific goal, including production standards and sales targets.

Generally, employers and employees agree in advance on the method and timing of payment of nondiscretionary bonuses. This is the case for commission wages, sales incentives and other rewards offered in direct correlation to the employees’ quantity and quality of work.

Nondiscretionary bonuses are part of an employee’s weekly compensation and must be included in the determination of a regular wage rate.” <https://www.sullivan-benefits.com/wp-content/uploads/Bonuses-Discretionary-versus-Nondiscretionary-12318.pdf>

Q.5 How is overtime calculated?

When an employee is entitled to overtime pay, it must equal at least one and one-half times his or her “regular rate” for each hour (or fraction thereof) of overtime. The regular rate includes all compensation received by the employee in the workweek with a few statutory exclusions. Overtime pay is based on hours worked in excess of 40 hours during a given workweek. [29 U.S.C. § 207(b)(1)]- Payroll Answerbook

Q.6 Could Hazard pay be discretionary and not be factored into overtime. Most likely, no.

Recent guidance on discretionary “non-work” bonuses:

<https://www.dol.gov/agencies/whd/overtime/2019-regular-rate>

Q.7. Calculations - Next page (3)

Disclaimer: Please note I’m not an attorney! I have included law and legal references for your additional information. If you have more questions, please find legal counsel with experience in employment law!

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