

## 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.