

LEGAL UPDATE

Lump Sum Nondiscretionary Bonuses Must Be Included in Regular Rate

The U.S. Department of Labor (DOL) has asserted once again that employers must include nondiscretionary bonuses in their employee's regular wage rate calculations. In a [new opinion letter](#), the DOL outlines how employers may go about allocating lump sum nondiscretionary bonuses that cover more than one workweek. The issue of bonus allocation is important because overtime pay must be determined on a weekly basis.

Nondiscretionary Bonuses

In the opinion letter, the DOL states that nondiscretionary bonuses count as remuneration and must be included in an employee's regular rate.

Nondiscretionary bonuses create an expectation of payment. In other words, employers must pay these bonuses to employees who satisfy the eligibility requirements for them. In contrast, discretionary bonuses are paid at the sole discretion of the employer.

Allocating a Lump Sum Bonus Payment

When the bonus covers only one workweek, the bonus must be added to that week's compensation. However, when the bonus covers multiple weeks, the employer has three mutually exclusive options:

1. Allocating the bonus "among the workweeks of the period in proportion to the amount of the bonus actually earned each week";
2. If proportional allocation is not possible, the employer may "assume that the employee earned an equal amount of bonus each week of the period to which the bonus relates"; or
3. If neither of the options above is appropriate, the employer may "assume that the employee earned an equal amount of bonus each hour of the pay period."

Provided to you by **Cowden Associates, Inc.**

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Next Steps for Employers

Opinion letters provide the DOL's official opinion on how labor and employment laws apply in specific situations.

Employers that rely on opinion letters may be able to establish a "good faith defense" under the law. As a result, employers should:

- Become familiar with this DOL guidance; and
- Review their payment practices to ensure compliance with wage rate calculations requirements.

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