



C O M P R E F O R M

A C T I O N B U L L E T I N

Bulletin No. 22

TO: Agency Human Resource Directors

FROM: Sara Redding Wilson, Director
Department of Human Resource Management

DATE: April 5, 2001

SUBJECT: Effect of Bonus Payments on Overtime Pay

Recently, I sent you revisions to the Compensation Policy (No. 3.05) and the Hiring Policy (No. 2.10). These policies, along with the Employee Recognition Programs Policy (No. 1.20), include new ways to provide lump-sum bonus payments to employees.

Since bonus payments *under most circumstances* are treated by the Fair Labor Standards Act (FLSA) as part of the employee's "regular rate of pay," an adjustment must often be made so as to pay the employee additional overtime as the result of a bonus payment. Attached to this Bulletin, you will find guidelines on how to determine whether a bonus payment must be included in the regular rate for determining overtime pay.

I have attached a chart (Chart 1) that illustrates how you compute additional overtime pay when it is required. A similar chart has been sent to you previously for computing overtime pay related to performance bonuses for employees whose salaries were at the maximum of their salary ranges. Chart 2 is also attached; it provides further assistance to you in determining which bonus payments may be included in the employees' regular rates.

Agencies may contact Bob Weaver at weaver@dhrm.state.va.us or at 804-225-2251 for assistance in determining which bonuses affect employees' regular rates or for assistance in computing overtime pay.

If you have any questions about this document, please contact Pam Hill, Compensation Consultant, at 804-786-4385 or phill@dhrm.state.va.us.

Copy: Office of the Attorney General
Cabinet Secretaries
Agency Heads

EFFECT OF BONUSES ON OVERTIME PAY

Whenever an agency makes a cash or non-cash bonus payment under the employee recognition program, pay practices, or exceptional incentive options, the Fair Labor Standards Act (FLSA) may require an additional overtime payment.

- First, the agency should determine whether each payment was made to a non-exempt employee, i.e., one covered by overtime provisions of the FLSA. Payments to exempt employees have no effect on overtime pay requirements.
- Next, the agency should determine whether each payment was a non-discretionary bonus, a discretionary bonus, or a gift, as described below. Discretionary bonuses and gifts have no effect on overtime pay requirements. Bonuses that are non-discretionary create an additional overtime pay requirement.
- Finally, the agency should determine which, if any, non-exempt employees worked overtime hours during the period of employment that the non-discretionary bonus payment covers. The period may vary from the current workweek to one year or more depending on the nature of the award.

Once the agency has identified the non-exempt employees who have been granted non-discretionary bonuses and who have worked overtime during the period when the award was earned, an additional payment to those employees must be computed based on Chart 1, attached.

Identifying Discretionary Bonuses, Gifts, and Non-Discretionary Bonuses

Discretionary bonuses are those which are not included in the regular rate. In order for a bonus to be considered discretionary, “both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly.”

In other words, the manager approving the award must have the discretion to decide at the last minute whether to grant the award. The type of award, policy language, and the Agency Salary Administration Plan will influence whether the agency may consider a bonus discretionary. Chart 2 is attached to assist you in considering which bonuses are likely to be discretionary.

Some awards that are made at Christmas time or other special occasions may be considered Gifts and excluded from the regular rate. Service awards typically are in this category. For a payment to be considered a gift, its amount must not be measured by or dependent on hours worked, production, or efficiency. Also, if the payment is so

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substantial that it can be assumed that employees consider it a part of their wages, the award cannot be considered a gift (see Chart 2).

Non-Discretionary bonus payments are those that include all bonus payments that do not qualify as discretionary bonuses or as gifts. These payments are planned and are linked to job performance. The employee can expect payment if conditions are met. Both cash payments and non-cash awards are included in the employee's regular rate if they are non-discretionary. Such non-discretionary bonuses must be applied to overtime hours worked during the time period for which the bonus was earned.

For example, if the bonus were for completion of a project that the employee worked on for six months, then the bonus would be applied to overtime hours worked during that six-month period.

Agencies may contact Bob Weaver at rweaver@dhrm.state.va.us for assistance in determining whether an award qualifies as a discretionary bonus or a gift or for assistance in computing overtime pay.