



## News & Trending

PUBLICATIONS & ALERTS

### FEDERAL DEPARTMENT OF LABOR MODERNIZES REGULAR RATE REGULATIONS

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By Jenny Bobbitt and Susan Milner Parrott

The federal Department of Labor (DOL) has **announced** the issuance of a final rule that, according to the DOL, will “encourage employers to provide additional and innovative benefits to workers without fear of costly litigation.” This encouragement comes in the form of the first significant update in over 50 years to the regulations addressing the determination of the regular rate under the federal Fair Labor Standards Act (FLSA).

Under the FLSA, employers must generally compensate non-exempt employees at a rate of one and one-half times their regular rate of pay for time worked over 40 hours per week. The regular rate of pay is not limited to an employee’s base wages, but, rather, is generally calculated by dividing “all remuneration for employment paid to, or on behalf of, the employee” by the number of hours worked in a given workweek. The new rule will update the regulations by specifying which employer-provided perks and benefits can be excluded from the calculation of the regular rate. According to the DOL, once the new rule becomes effective on January 15, 2020, “employers may offer the following perks and benefits to employees without risk of additional overtime liability:

- the cost of providing certain parking benefits, wellness programs, onsite specialist treatment, gym access and fitness classes, employee discounts on retail goods and services, certain tuition benefits (whether paid to an employee, an education provider, or a student loan program), and adoption assistance;
- payments for unused paid leave, including paid sick leave or paid time off;
- payments of certain penalties required under state and local scheduling laws;
- reimbursed expenses including cellphone plans, credentialing exam fees, organization membership dues, and travel, even if not incurred 'solely' for the employer’s benefit ... ;
- certain sign-on bonuses and certain longevity bonuses;
- the cost of office coffee and snacks to employees as gifts;
- discretionary bonuses, by clarifying that the label given a bonus does not determine whether it is discretionary and providing additional examples ... ; [and]
- contributions to benefit plans for accident, unemployment, legal services, or other events that could cause future financial hardship or expense.”

The final rule stems from the DOL’s recognition that modern compensation packages have evolved beyond wages, paid time off for holidays and vacations, and contributions to basic insurance plans, and now commonly include benefits and perks like those enumerated in the final rule.

In addition to updating the exclusions from the regular rate calculation, the final rule also provides guidance regarding whether certain other forms of compensation, such as payment for meal periods and “call back” pay, must be included in the regular rate. The final rule can be viewed [here](#).

If you have any questions about the new rule, please contact the Smith Anderson lawyer with whom you normally work.

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[Susan Milner Parrott](#)

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