

Example #1 – Bonus paid and earned during the pay period

Bonuses For purposes of calculating overtime pay, section 7(e) of the FLSA provides that non-discretionary bonuses must be included in the regular rate of pay. Non-discretionary bonuses include those that are announced to employees to encourage them to work more steadily, rapidly or efficiently, and bonuses designed to encourage employees to remain with a facility. Few bonuses are discretionary under the FLSA, allowing exclusion from the regular rate (see [29 CFR 778.200](#) and [778.208](#)). Referral bonuses paid for recruitment of new employees are not included in the regular rate of pay **if all of the following conditions are met:** (1) participation is strictly voluntary; (2) recruitment efforts do not involve significant time; and (3) the activity is limited to after-hours solicitation done only among friends, relatives, neighbors and acquaintances as part of the employees' social affairs.

An intermediate care facility for the disabled pays its employees on a bi-weekly basis. If employees work all the hours that they are scheduled to work in a pay period, they are given a \$100 bonus. If an employee works overtime, must this bonus be included in their regular rate of pay for overtime purposes?

Yes. In computing an employee's regular rate under the 40 hour overtime standard, the employer must add half of the bi-weekly bonus (\$50) to the employee's earnings (hourly rate times the total hours worked) for that week. The resulting total compensation would be divided by the total hours the employee worked during that week to determine the regular rate.

An employee paid biweekly at a rate of \$12 per hour plus a \$100 attendance bonus, working a schedule of 56 hours per week as shown in the chart below, would be due overtime pay as follows:

WEEK 1	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Hours Worked	8	8	8	8	8	8	8

WEEK 2	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Hours Worked	8	8	8	8	8	8	8

$\$100$ (bi-weekly attendance bonus) $\div 2 =$ $\$50$ (weekly bonus equivalent)
 56 hours worked \times $\$12$ /hour + $\$50$ (weekly bonus equivalent) = $\$722$ (total ST compensation)
 $\$722$ (total ST compensation) $\div 56$ hours worked = $\$12.89$ (regular rate)
 $\$12.89$ (regular rate) $\times \frac{1}{2} =$ $\$6.45$ (half-time premium)
 $\$12.89$ (regular rate) + $\$6.45$ (half-time premium) = $\$19.34$ (overtime rate)

40 (straight time hours) \times $\$12.89$ (regular rate) = $\$515.60$ (straight time earnings)
 16 (overtime hours) \times $\$19.34$ (overtime rate) = $\$309.44$ (overtime earnings)
Total earnings for week one $\$825.04$
Total earnings for week two $\$825.04$
Total earnings for bi-weekly period $\$1,650.08$

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Example #2 – Bonus earned over a series of pay periods

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In an effort to attract more nursing personnel, a skilled nursing facility's nursing department gives hourly paid LPNs and RNs a \$2,000 bonus after being employed six months. Does this bonus have to be included in the regular rate? If so, how does it need to be calculated?

Yes. The retention bonus must be included in the regular rate calculation in overtime weeks covered by the bonus period. The retention bonus described above was earned over six months or 26 weeks. The weekly equivalent is \$76.92 ($\$2,000 \div 26$ weeks). If an employee works overtime during the 26 week period, the increase in the regular rate is calculated by dividing \$76.92 by the total hours worked during the overtime week.

In the following calculation, the \$2,000 retention bonus was earned over six months or 26 weeks, for a weekly equivalent of \$76.92 ($\$2000 \div 26$ weeks). If the employee worked ten hours of overtime in their 9th week of employment, the employee would be due an additional \$7.70 in overtime earning as follows:

$\$76.92 \div 50$ hours = $\$1.54$ (increase in the regular rate)
 $\$1.54 \times \frac{1}{2} =$ $\$.77$ (increase in the additional half-time premium)

\$.77 x 10 hours of overtime worked = \$7.70 (increase in overtime earnings due to the bonus)

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Example #3 – Shift Differentials

Employers also must include shift differential pay when determining an employee's regular rate of pay (see [29 CFR 778.207\(b\)](#)). The following example provides guidance on how to calculate overtime for employees who receive shift differential pay.

A personal care assistant at an assisted living facility is paid \$8 an hour and overtime on the basis of the 40 hour workweek standard. She works three eight-hour day shifts at \$8 an hour and three eight-hour evening shifts. The assistant is paid \$1 shift differential for each hour worked on the evening shift. How much should she be paid for her eight hours of overtime?

The additional half-time must be computed based on the regular rate of pay. The regular rate is defined as the total remuneration divided by the total hours worked. The assistant earned a total of \$408 for the 48 hours that she worked (\$8 an hour times 24 hours plus \$9 an hour times 24 hours). Her regular rate equaled \$8.50 and her half-time premium is \$4.25. Her total earnings for the 8 hours of overtime are \$102.

Straight-time computation

3 days x 8 hours/day x \$8/hour	\$192
3 evenings x 8 hours/evening x \$8/hour	\$192
3 evenings x 8 hours/evening x \$1/hour (shift differential)	\$ 24
Total ST earnings	\$408

Regular rate and half-time premium computation

\$408 (total ST compensation) ÷ 48 (total hours worked) =	\$ 8.50 (regular rate)
\$ 8.50 (regular rate) x ½ =	\$ 4.25 (half-time premium)
\$ 8.50 (regular rate) + \$ 4.25 (half-time premium) =	\$12.75 (overtime rate)

Total compensation calculation

40 hours x \$ 8.50 (regular rate) =	\$340 (straight time earnings)
8 overtime hours x \$12.75 (overtime rate) =	\$102 (overtime earnings)
Total earnings	\$442

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Example #4 – Multiple rates of pay

An employee works as a nurses' aide on a full time basis at \$11 an hour. On weekends, the employee fills in as a receptionist and is paid \$7 an hour. She is paid on a 40-hour workweek overtime basis. How is her overtime computed?

Overtime may be computed on the regular rate of pay, determined by the weighted average of the two rates. For example, if the employee worked 40 hours at \$11 and 16 hours at \$7, the following is the regular rate calculation:

40 hours x \$11/hour + 16 hours x \$7/hour =	\$552 (total ST compensation)
\$552 (total ST compensation) ÷ 56 hours worked =	\$9.86 (regular rate)
\$9.86 (regular rate) x ½ =	\$4.93 (additional half time premium)
\$9.86 (regular rate) + \$4.93 =	\$14.79 (overtime rate)
\$9.86 (regular rate) x 40 hours =	\$394.40 (total straight time earnings)
\$14.79 (overtime rate) x 16 (overtime hours)	\$236.64 (total overtime earnings)
Total compensation	\$631.04

If an employee works at two or more different jobs in a single workweek, for which different non-overtime rates of pay have been established, his or her employer may use a weighted average to compute the employee's regular rate (as shown in the above example). However, an employee who performs two or more different kinds of work, for which different straight time hourly rates are established, may agree with his or her employer in advance of the performance of the work that he or she will be paid during overtime hours at a rate not less than one and one-half time the hourly rate established for the type of work he or she is performing during the overtime hours (see [29 CFR 778.419](#)).

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Example #5 – Salary paid to a non-exempt employee

If under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week (see [29 CFR 778.114](#)).

To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid \$420 a week for whatever number of hours are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is \$8.40 (\$420 divided by 50 hours). In addition to the salary, half the regular rate, or \$4.20, is due for each of the 10 overtime hours, for a total of \$462 per week. If the employee works 60 hours, the regular rate is \$7.00 (\$420 divided by 60 hours). In that case, an additional \$3.50 is due for each of the 20 overtime hours for a total of \$490 for the week.

In no case may the regular rate be less than the minimum wage required by the FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime pay. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

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