

# THE REGULAR RATE

for Calculating Overtime – What to Include, What to Leave Out.

# HOLIDAY PAY

- ▶ Should holiday pay be included in the regular rate when calculating overtime compensation?
  - ▶ Generally, no. According to the Fair Labor Standards Act, holiday pay is not considered compensation for hours worked, and thus does not need to be considered when calculating overtime compensation. 29 U.S.C.A. § 207(e)(2).

# HOLIDAY PAY

- ▶ What if the employee forgoes taking the holiday off?
  - ▶ Holiday pay is not included in the regular rate even when an employee forgoes taking a holiday but still receives holiday pay. 29 C.F.R. § 778.219(a).

# HOLIDAY PAY

- ▶ Should the premium rate paid for working on a holiday be included in the regular rate when calculating overtime?
  - ▶ Extra compensation provided by a premium rate of at least time and one-half (1.5x) which is paid for work on holidays may be treated as an overtime premium. 29 C.F.R. § 778.203.
  - ▶ If the premium rate is less than time and one-half (1.5x), the extra compensation must be included in determining the employee's regular rate of pay and cannot be credited toward statutory overtime due. 29 C.F.R. § 778.203.
  - ▶ *Note: this does not apply to holiday pay that is paid whether the employee works or not. In that case the previous rule (§ 778.219) applies.*


# § 14-52-105: COMPENSATION; LEGAL HOLIDAYS FOR LAW ENFORCEMENT OFFICERS

- ▶ (a) Arkansas law requires that all law enforcement officers regardless of their titles receive compensation for all legal holidays.
  - ▶ This does not include radio operators, dispatchers, and jailers. See *City of Pocahontas v. Huddleston*, 309 Ark. 353, 357, 831 S.W.2d 138, 141 (1992).
- ▶ In defining “law enforcement officer” under the statute, the Supreme Court of Arkansas extended the definition of law enforcement officers from Ark. Code Ann. § 12-9-101(3).
  - ▶ “Law enforcement officer” means any appointed law enforcement officer who is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state....

# § 14-52-105: COMPENSATION; LEGAL HOLIDAYS AND FLSA

- ▶ (b) The holiday compensation shall be based on the law enforcement officer's daily rate of pay AND in addition to the regular pay schedule.
  - ▶ Cities may not reduce salaries to set off the holiday compensation; the holiday compensation must be in addition to the regular pay schedule. See *City of Pocahontas v. Huddleston*, 1992, 309 Ark. 353, 831 S.W.2d 138

# § 14-52-105: COMPENSATION; LEGAL HOLIDAYS AND FLSA


- ▶ (c) The holiday compensation may be included within the officer's "base pay."
    - ▶ FLSA regulations provide that holiday pay *need not* be included in the regular rate when calculating overtime.
    - ▶ The holiday compensation may count as part of the officer's salary, but it should not be included in the regular rate when calculating overtime.
  - ▶ (d) Finally, the holiday compensation shall be prorated and paid during the regular payroll periods OR paid in one lump sum annually on a date in December designated by the municipality.
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# UNIFORM PAY

- ▶ Under the Fair Labor Standards Act, uniform pay by way of reimbursement should not be included in the regular rate. 29 C.F.R. § 778.217.
- ▶ This includes the actual or reasonably approximate amount expended by an employee in purchasing, laundering or repairing uniforms or special clothing which his employer requires him to wear. 29 C.F.R. § 778.217(b)(2).
- ▶ It should be noted, however, that only the actual or reasonably approximate amount of the expense is excludable from the regular rate. If the amount paid as “reimbursement” is disproportionately large, the excess amount will be included in the regular rate. 29 C.F.R. § 778.217(c).



# LONGEVITY PAY

- ▶ In opinion letter 1985 WL 1087350, published in 1985, the Wage and Hour Division opined that longevity payments must be included with other wages paid in determining the regular rate of pay for overtime compensation purposes.
  - ▶ 29 C.F.R. § 778.211(c) states that bonuses which are announced to employees to induce them to work more steadily, more rapidly, or more efficiently, or *to remain with the employer* are regarded as part of the regular rate of pay.
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# BONUSES

- ▶ Not included in regular rate if:
  - ▶ Paid in recognition of services performed in a given period
  - ▶ Payment is to be made and amount is to be determined
    - ▶ At the sole discretion of employer
    - ▶ At or near the end of the period
  - ▶ Not pursuant to any prior contract, agreement or promise
    - ▶ Causing the employee to expect such payments regularly.

# EDUCATION INCENTIVE PAY

- ▶ Educational incentive pay must be included in the regular rate of pay for calculating overtime compensation. FLSA2005-15NA.
  - ▶ Under the provisions of 29 U.S.C.A. § 207(e), all remuneration for employment must be included in calculating the regular rate of pay on which overtime compensation is paid except for eight specified types of payments.
  - ▶ In its opinion letter, the Wage and Hour Division found that the exceptions do not provide an exclusion for guaranteed educational incentives. FLSA2005-15NA.
  - ▶ Therefore, if a municipality has agreed in advance to pay its employees bonuses upon completion of an approved training course or education program, the incentive pay must be calculated in the overtime compensation.
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