U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

FLSA2026-6

May 28, 2026

Dear **Name***:

This letter responds to your request for an opinion concerning whether a quarterly bonus program complies with the overtime pay requirement of the Fair Labor Standards Act (FLSA or Act). Specifically, you ask for confirmation that the quarterly payment you describe constitutes a "percentage of total earnings" bonus that provides for the simultaneous payment of any overtime compensation due on the bonus or, in the alternative, for guidance addressing how to include the bonus in each employee's "regular rate of pay."

It is our opinion that, under the circumstances presented, your client's quarterly bonus provides simultaneous payment of any overtime compensation due on the bonus, satisfying the Act's overtime requirement. Accordingly, when your client distributes the quarterly bonus to its employees, it need not recompute the regular rate or pay additional overtime compensation.

BACKGROUND

You represent that your client pays a quarterly bonus to a group of "eligible employees," at least some of whom work overtime hours and are entitled to the requisite pay under the FLSA. At the end of each quarter, your client determines the exact number of eligible employees and the available bonus pool based on its sales revenue during the quarter. Your client then generates a "gross earnings" report, which includes "both straight time and overtime compensation earned during the quarter" by the eligible employees. Your client then determines each employee's share of the bonus pool by "calculating the percentage that the employee's total gross compensation (straight time plus overtime) represents of the total gross compensation paid to all eligible employees for the quarter." Finally, your client multiplies the resulting percentage by the bonus pool amount to arrive at each employee's quarterly bonus. For example, if the available bonus pool is $100,000 and an employee's total gross compensation amounted to 5 percent of the total gross compensation paid to all eligible employees in the quarter, then the employee would receive a $5,000 bonus, *i.e.*, 5 percent of the $100,000 bonus pool. Your client does not provide additional overtime pay on the quarterly bonus, as you believe the bonus constitutes a "percentage of total earnings" bonus which provides simultaneous payment of any required overtime pay due on the bonus, as set forth in 29 C.F.R. § 778.210.

We assume that the "straight time compensation" described in your letter refers to the straight-time earnings used to calculate overtime under the FLSA and would not include, for example, items such as gifts, discretionary bonuses, expense reimbursements, or employer contributions to employee benefit plans that are excluded from the "regular rate" used to calculate overtime. *See* 29 U.S.C. § 207(e). Relatedly, we also assume that the term "overtime compensation" means overtime pay equal to that which is required by the Act based on an employee's pre-bonus earnings, and that "gross" compensation means the amount is not subject to further adjustments (whether through payroll deduction or otherwise) other than corrections for prior workweeks or

limited deductions that are permitted to cut into FLSA-protected wages. *See* 29 C.F.R. §§ 531.38–.40 (recognizing that deductions for items such as taxes, required wage garnishments, employee charitable donations, employee union dues, or employee insurance premiums are equivalent to a payment to the employee). Finally, we presume that, when preparing the quarterly reports and making the computations to determine the quarterly bonuses due, whatever method your client utilizes for aligning the workweek—whether a rolling 13-week or 3-calendar-month period—is applied evenly and consistently each quarter.

GENERAL LEGAL PRINCIPLES

The FLSA requires that employers pay non-exempt employees at least the federal minimum wage for all hours worked and overtime compensation "at a rate not less than one and one-half times the regular rate at which [the employee] is employed" for all hours worked over 40 hours in a workweek. 29 U.S.C. §§ 206(a), 207(a)(1). An employee's "regular rate" for determining any overtime pay due under paragraph 7(a)(1) is an hourly rate calculated by totaling "all remuneration for employment paid to, or on behalf of, the employee" for the workweek, with the exception of eight categories of statutory exclusions enumerated in subsection 7(e) of the Act. *See* 29 U.S.C. § 207(e). This sum constitutes an employee's total "straight-time" earnings for the workweek, which is then divided by the total hours actually worked by the employee in that same workweek to arrive at the regular rate. *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446, 459–60 (1948); *see also* 29 C.F.R. § 778.109. The employee's overtime premium due under paragraph 7(a)(1) for that workweek is calculated by dividing the regular rate in half (yielding the "half-time" rate) and multiplying that amount by the hours worked over 40. *See* 29 C.F.R. § 778.110(a).

As noted above, the Act excludes certain types of payments from the regular rate calculation. Paragraph 7(e)(3), for example, permits employers to exclude discretionary bonuses from the regular rate.[1] 29 U.S.C. § 207(e)(3). Non-discretionary bonuses, on the other hand, must be included in the regular rate. *See* 29 C.F.R. §§ 778.208, 778.211; *see also* WHD Opinion Letter FLSA2026-2 at 3–4 (Jan. 5, 2026) (explaining that an employer's non-discretionary bonus must be included in each employee's regular rate). The Act also permits employers to exclude from the regular rate payments which function as overtime premiums for certain hours, such as hours worked over 40 in a workweek, and to credit those payments toward their overtime pay obligation. 29 U.S.C. §§ 207(e)(5)–(7), (h)(2).

Calculating overtime premiums is straightforward for an employee whose only compensation for a given workweek is a salary or hourly wage, perhaps occasionally supplemented by an excludable discretionary bonus. However, for employees who receive nondiscretionary bonuses, the amounts of those bonus payments are often determined and paid well after the normal workweeks or pay periods in which they are earned. In such cases, an employer may "disregard the bonus in computing the regular hourly rate until such time as the amount of the bonus can be ascertained" and, in the meantime, pay the employee overtime earnings, exclusive of the additional portion on the bonus, on their regular paydays. *See* 29 C.F.R. § 778.209(a). Later, when the precise amount

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[1] A bonus is discretionary if "*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[.]" 29 U.S.C. § 207(e)(3) (emphases added).

of the bonus is ascertained, "it must be apportioned back over the workweeks of the period during which it may be said to have been earned[,]" and any additional overtime compensation due must be calculated for each workweek. *Id*. In other words, the employee's regular rate for each workweek is recomputed by adding the bonus to the straight-time earnings already paid, and the recomputed regular rate is used to determine the overtime premium due. Any overtime premium already paid for the workweek is subtracted from (or, more precisely, credited toward) the recomputed overtime premium due so that the additional overtime premium paid is based solely on the increase in the regular rate resulting from the bonus.

Nevertheless, recomputation of an employee's regular rate and the resulting additional overtime pay are unnecessary for a "percentage of total earnings" bonus, although they may be required for other types of bonuses. Assuming "total earnings" is the sum of an employee's total straight-time earnings and total overtime earnings, a percentage of total earnings bonus is a bonus payment that provides for "the simultaneous payment of overtime compensation due on the bonus" (*i.e.*, its own required overtime compensation). 29 C.F.R. § 778.210; *see also id.* § 778.503. This is not an exception to the FLSA's overtime pay requirement, but the Division's longstanding recognition that a bonus that increases an employee's total earnings by a fixed percentage "increases both straight time and overtime wages by the same percentage, and thereby includes proper overtime compensation as an arithmetic fact." *Id*. § 778.503; *see also id.* § 778.210 (explaining that such percentage of total earnings bonuses "satisfy in full the overtime provisions of the Act and no recomputation will be required"); *Brock v. Two R Drilling Co.*, 789 F.2d 1177, 1179 (5th Cir. 1986).[2] Requiring additional overtime pay for such bonuses "would be to impose overtime upon overtime," and, therefore, be inconsistent with the Act. *Siomkin v. Fairchild Camera & Instrument Corp*., 174 F.2d 289, 294 (2d Cir. 1949).

Employers generally calculate total earnings bonuses in one of two ways. The first, as described in 29 C.F.R. § 778.210, occurs when an employer applies a percentage to an employee's total straight-time and overtime earnings directly without regard to how the employee's earnings or hours compare to those of other employees. The second takes place when an employer uses earnings or hours to compare each employee participating in a bonus pool to all the employees participating in the bonus pool. Like your client, an employer may divide each employee's total earnings by the total earnings of all employees participating in the bonus pool and then multiply

[2] In 1950, the Division published interpretive guidance in the Code of Federal Regulations that is virtually identical to 29 C.F.R. § 778.210, *see* 15 Fed. Reg. 623, 628 (Feb. 4, 1950), reflecting guidance that WHD originally published in 1941. *See* WHD Release R-1548(a), "*The Effect of Bonus Payments on Computation of Regular Rate of Pay under the Fair Labor Standards Act*" at 2–3 (Sep. 2, 1941) (copy attached). WHD has consistently applied this tenet. *See*, *e.g.*, WHD Opinion Letter FLSA-947, at 1–2 (July 14, 1949) (explaining that, where employees are paid bonuses "arrived at by taking a predetermined percentage of the total straight-time and overtime earnings of the individual employees during the [same] period[,]" the "bonus, as a mathematical fact, itself includes the payment of both straight-time and overtime compensation[,]" satisfies the FLSA's overtime pay requirement, and thus requires "no recomputations" of the regular rate) (copy attached). Indeed, we have affirmed these principles on several occasions since. *See* WHD Opinion Letter, 1997 WL 998000 (Jan. 23, 1997); WHD Opinion Letter, 2001 WL 1558953 (Feb. 5, 2001); WHD Opinion Letter FLSA2006-4NA (Feb. 17, 2006); WHD Opinion Letter FLSA2019-7 (July 1, 2019); *see also* WHD Field Operations Handbook (FOH) 32c05a.

that percentage by the bonus pool amount to determine each employee's share.[3] Or, as provided in FOH 32c05a, an employer may divide the bonus pool amount by the participating employees' total earnings and then multiply that percentage by each employee's total earnings to determine his or her bonus payout. Either approach is acceptable.

Generally, an employer may consider additional factors (such as seniority, work location, job title, base pay, performance, or conduct) to determine the magnitude of an employee's percentage increase. As long as the resulting percentage increase to each employee's pre-bonus overtime earnings is no less than the percentage increase to their pre-bonus straight-time earnings, then the principle set forth in sections 778.210 and 778.503 applies even though different employees might receive different percentages. However, an employer may not use the percentage of total earnings bonuses "to evade the overtime requirements of the Act[,]" 29 C.F.R. § 778.210, such as where the percentage bonus "decrease[s] . . . in direct proportion to increases in the number of hours worked in a week in excess of 40." *See id*. § 778.503.[4] An employer also may not dilute an employee's overtime earnings by either: (1) applying a higher percentage increase to the straight-time earnings than the overtime earnings[5] or (2) including items within an employee's earnings that were previously excluded from the employee's regular rate of pay, such as gifts, discretionary bonuses, expense reimbursements, or employer contributions to employee benefit plans.[6]

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[3] Similarly, a bonus plan could call for an employer to divide the total hours worked by each employee by the total hours worked by all employees participating in the bonus pool and then multiply that percentage by the bonus pool amount to determine each employee's share so long as each hour worked under 40 in a workweek is valued at one hour and each overtime hour worked is "boosted" to 1.5 hours when determining total hours worked. *See* FOH 32c05b. Comparing total hours worked also requires the employer to be careful with respect to hours that were excluded when determining overtime pay due (for example, vacation or sick leave hours that were excluded).

[4] Where the terms indicate that a bonus is simply a percentage of the employee's "total earnings," with no further indication that it is a percentage of the employee's total straight-time compensation and total overtime compensation, WHD will consider as a threshold matter whether it is truly in the nature of a percentage of total earnings bonus, or is instead a device to evade the FLSA's overtime requirement as described in 29 C.F.R. §§ 778.502 and 778.503. There is no indication—and we do not suggest—that your client's quarterly bonus is an effort to evade the FLSA's requirements. *Cf. Breig v. Covanta Holding Corp.*, No. 21-865, 2022 WL 837242, at *2–4 (E.D. Pa. Mar. 21, 2022) (affirming the applicability of 29 C.F.R. § 778.210 to a percentage of total earnings bonus where the plaintiff did "not explain how the [bonus plan] tries to evade overtime requirements other than speculating that it does").

[5] In contrast, a bonus structured to increase an employee's pre-bonus overtime earnings by a greater percentage than the employee's pre-bonus straight-time earnings would not require additional overtime pay under the FLSA.

[6] Relatedly, an employee's earnings may include certain premium payments that are equivalent to FLSA overtime premiums, even though such payments are excludable from the regular rate of pay. *See* 29 U.S.C. § 207(e)(5)–(7), (h)(2); *see also* WHD Opinion Letter FLSA2018-9 at 2–3 (Jan. 5, 2018) (explaining that, consistent with the intent of subsections 7(e) and 7(h) of the FLSA, "an employer's obligation with regard to … the treatment of payments properly excludable under section 7(e)" remains unaffected when considering whether 29 C.F.R. § 778.210 applies). Notably, when determining whether the FLSA requires additional overtime pay for a workweek because of a subsequent bonus payment attributed (in whole or in part) back to that workweek, an employer may credit excess premium payments described in sections

Where an employer, like your client, compares each employee's total earnings to the total earnings of all the employees in the bonus pool to determine the share of the bonus pool to pay each participating employee, each employee receives a different percentage of the bonus pool. Notably, each employee in the bonus pool is still being paid as a bonus a fixed percentage of his or her own *total* earnings, and the formula for determining that percentage is the same for all the employees: the bonus pool amount divided by the total earnings of all employees participating in the pool. *See* FOH 32c05a. For example, if the bonus pool amount is $10,000 and the total earnings of all employees participating in the pool is $40,000, then each employee should receive a bonus that increases their respective total earnings by 25%. If the bonus pool amount is $20,000 and the total earnings of all employees participating in the pool is $200,000, then each employee should receive a bonus that increases their total earnings by 10%. Thus, although set forth as a percentage of a bonus pool, this payment operates the same as a bonus where the percentage is applied directly to a particular employee's total earnings. Accordingly, it satisfies the requirements of 29 C.F.R. § 778.210 and, therefore, constitutes a percentage of total earnings bonus, even if the bonus plan does not describe the bonus in such terms.

OPINION

Based on the facts you have provided and the principles recounted above, we conclude that your client's quarterly non-discretionary bonus, if calculated as described below, constitutes a percentage of total earnings bonus under section 778.210 that already includes payment of the overtime premium compensation due on said bonus under the Act. Although we do not know the eligibility requirements for the bonus pool or whether there are any other factors given weight when allocating the pool among participants, we have assumed for purposes of this analysis that there are no additional factors (for determining the quarter, eligibility, or allocation among participants) that would result in the bonus payments for a quarter not being the same percentage of each participating employee's straight-time earnings and overtime earnings for the quarter.

As an initial matter, the Act does not regulate an employer's determination of the total amount available to employees in a bonus pool. So, while the available bonus you describe is derived from your client's total gross sales revenue for the quarter, it also could be derived from another metric, such as a methodology tied to the employer's quarterly profits or available financial assets.

Next, we believe that your client's approach of comparing each participating employee's total earnings to the total earnings of all participating employees, as you described, should result in an acceptable percentage of total earnings bonus under section 778.210 so long as the earnings for each employee include any required overtime premiums and do *not* include any amounts previously excluded from the regular rate of pay when determining those overtime premiums. For section 778.210 to apply, the bonus must be a percentage of each employee's total earnings—both straight-time earnings and overtime earnings—that does not dilute the overtime portion of the ratio. Although your client calculates the bonus paid out to each participating employee as a percentage of the bonus pool, each employee is paid a bonus which is equal to the same fixed

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7(e)(5)–(7) of the FLSA, such as overtime pay for work in excess of a daily standard or overtime pay paid at a rate which is greater than 1.5 times the employee's regular rate of pay, against any overtime obligation attributable to the bonus. *See* 29 U.S.C. §§ 207(e)(5)–(7), (h)(2).

percentage of his or her total earnings, *i.e.*, the bonus pool amount divided by the total earnings of all employees participating in the pool.

A simple example illustrates the point. Suppose that four employees are each paid a $10 hourly rate and work 35 hours, 40 hours, 50 hours, and 60 hours respectively in a workweek. The available bonus pool for the employees for that workweek is $800, all of their total (straight-time and overtime) earnings for the workweek is $2,000, and each employee's bonus equals the percentage that his or her total (straight-time and overtime) earnings is of all the participating employees' earnings, as follows:

	Straight-Time Earnings ($10 per hour)	**Overtime Earnings ($5 per hour in excess of 40)**	**Total Earnings**	**Bonus Paid**	**Bonus Percentage of Total Earnings**[7]
Employee A (35 hours)	$350	$0	$350	$140 or (350 ÷ $2,000) × $800	140 ÷ 350 = 40%
Employee B (40 hours)	$400	$0	$400	$160 or (400 ÷ $2,000) × $800	160 ÷ 400 = 40%
Employee C (50 hours)	$500	$50	$550	$220 or (550 ÷ $2,000) × $800	220 ÷ 550 = 40%
Employee D (60 hours)	$600	$100	$700	$280 or (700 ÷ $2,000) × $800	280 ÷ 700 = 40%
Total	$1,850	$150	$2,000	$800	

Employees A and B did not work overtime that workweek, but the overtime earnings of Employees C and D are accounted for in the bonus calculation because the bonus is determined using the employees' total earnings (including overtime pay). And as the table below indicates, this percentage-of-total-earnings bonus increases each employee's pre-bonus overtime earnings by the same percentage as it increases their pre-bonus straight-time earnings (even though each employee receives a different bonus amount), as follows:

	Straight-Time Earnings Increase	**Overtime Premium Earnings Increase**	**Total Earnings Increase**
Employee A	$350 × 40%	$0 × 40%	$140 + $0 = $140
Employee B	$400 × 40%	$0 × 40%	$160 + $0 = $160
Employee C	$500 × 40%	$50 × 40%	$200 + $20 = $220
Employee D	$600 × 40%	$100 × 40%	$240 + $40 = $280

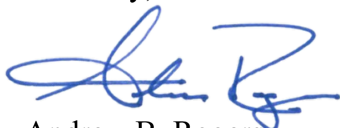
[7] Consistent with the above explanation, the percentage of total earnings represented by the bonus for each employee (*i.e.*, 40 percent) is the same as the bonus pool amount ($800) divided by the total earnings of all employees participating in the pool ($2,000), or 40 percent.

Accordingly, the bonus above includes simultaneous payment of overtime compensation due Employees C and D on the bonus, satisfying the FLSA's overtime pay requirement elucidated by section 778.210. Recomputing overtime due Employees C and D in light of the bonuses under section 778.209 yields the same result—demonstrating why a percentage of total earnings bonus includes proper overtime compensation as an "arithmetic fact." For example, Employee C received $770 in total pay for the workweek with the bonus and no recomputation of overtime. Applying section 778.209 instead, Employee C's regular rate is $14 ($500 in straight-time earnings ($10 per hour × 50 hours worked) + $200 of the bonus—the $220 bonus less the $20 of the bonus that was a percentage of overtime earnings and is thus excluded from the regular rate under 29 U.S.C. § 207(e)(5)—equals $700 ÷ 50 hours worked), yielding $70 in overtime premium pay due ($14 × 0.5 ×10 overtime hours worked) for total pay due of $770 ($700 in straight-time + $70 in overtime). Sections 778.210 and 778.503 explain that such recomputation is not necessary for valid percentage of total earnings bonuses, such as your client's bonus, as you describe it.

This letter is an official interpretation of the governing statutes and regulations by the Administrator of the Wage and Hour Division of the United States Department of Labor for purposes of the Portal-to-Portal Act. *See* 29 U.S.C. § 259. This interpretation may be relied upon in accordance with section 10 of the Portal-to-Portal Act, notwithstanding that after any such act or omission in the course of such reliance, the interpretation is "modified or rescinded or is determined by judicial authority to be invalid or of no legal effect." *Id.*

We trust that this letter is responsive to your inquiry.

Sincerely,



Andrew B. Rogers
Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(6).** You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for any litigation that commenced prior to your request. This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. The existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein.