

## Overtime Is Not Paid At Only 1.5 Times An Employee's Hourly Rate

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When calculating overtime, it is not 1.5 times the employee's hourly rate. It is 1.5 times the employee's regular rate of pay. The regular rate of pay includes hourly wages, plus certain bonuses, commissions, shift differentials and more. It does not include paid leave or employer contributions to retirement accounts. The U.S. Department of Labor recently identified items that can be excluded from the regular rate of pay calculation:

- The cost of providing wellness programs, onsite specialist treatment, gym access and fitness classes.
- An employee discount on retail goods and services.
- Payments for unused paid leave, including paid sick leave.
- Discretionary bonuses.
- Benefit plans, including accidents, unemployment and legal services.
- Tuition programs such as reimbursement programs or repayment of educational debt.
- Reimbursed expenses, including travel expenses that don't exceed maximum travel reimbursement under the Federal Travel Regulation System.

Please note that most bonuses are non-discretionary so they are included in overtime calculations. Simply calling a bonus "discretionary" does not mean it can be excluded from the regular rate. To exclude a bonus, the bonus must not be paid in accordance with the contract or agreement.

Employers must ensure that the employee's regular rate of pay is properly calculated to ensure overtime is properly calculated.

If you are an employer with questions about overtime, contact any member of the Wilentz Employment Law Team at 732-352-9858.

### **Attorney**

- Tracy Armstrong

### **Practice**

- Employment Law