

## DOL Clears the Way for Employee Perks with Overtime Rule Clarification

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In a tightening job market, more companies are considering offering perks such as gym memberships, financial assistance for adoptions, tuition reimbursements and signing bonuses as a way to recruit and retain workers. While most businesses acknowledge the advantage of these kinds of benefits, some employers may have held back on offering them, waiting to see how the Department of Labor would treat the cost of these perks when it comes to determining an employee's regular rate – and thus overtime compensation – when the new overtime rules took effect on January 15. For those companies there is good news – the Department of Labor has clarified that many benefits do not need to be included when determining an employee's regular rate of pay for overtime calculations, thus lowering the cost of overtime pay.

An employee's "regular rate of pay" is his or her effective hourly pay, which could include some compensation beyond base pay such as bonuses and commissions. In issuing the new overtime regulations, the Department of Labor provided significant clarification around what employee benefits and perks are included in determining the regular rate of pay with the goal of encouraging companies to offer more benefits to employees.

In the simplest terms, the rules say that as long as a benefit is not tied to the quantity or quality of an employee's work, it does not need to be included in the regular rate of pay. Benefits that meet these conditions as outlined in the Fair Labor Standards Act include:

- Cost of providing parking, gym memberships, wellness programs, tuition benefits and adoption assistance
- Payments for unused paid leave, such as vacation or sick days
- Reimbursed expenses such as cell phone plans, professional memberships, credentialing exam fees and travel (even if the travel is not solely work related)
- Some sign-on bonuses and longevity bonuses
- Cost of coffee, snacks or meals to employees as gifts

The good news for companies is that, even though the new year has begun and the overtime rules have already taken effect, there is no restriction on when new employee benefits can be offered. So if your company has been debating offering gym memberships to help employees stick to their New Year's resolutions or has been thinking about providing lunch for employees every Friday – go for it! There is no time like the present to offer new perks, boost employee morale and hopefully

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retention and recruitment efforts as well.

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