



DOL Clarifies Overtime Requirements for Quarterly Bonus Pools

On May 28, 2026, the U.S. Department of Labor (DOL) issued Opinion Letter [FLSA2026-6](#), addressing whether a quarterly bonus pool program structured around employees' proportionate share of total gross earnings satisfies the Fair Labor Standards Act's (FLSA) overtime pay requirements.

HIGHLIGHTS

- On May 28, 2026, the DOL issued Opinion Letter FLSA2026-6, addressing whether a quarterly bonus pool program structured around employees' proportionate share of total gross earnings satisfies the FLSA's overtime pay requirements.
- The DOL confirmed that an employer's quarterly bonus program qualified as a percentage of total earnings bonus because the bonus payments automatically included any required overtime premium, and the employer did not need to recalculate the regular rate of pay or pay additional overtime on the bonus.

Background

The FLSA generally requires employers to pay nonexempt employees at least the federal minimum wage for every hour worked and 1.5 times their regular rate of pay for each hour worked over 40 in a workweek. Under the FLSA, the regular rate of pay includes all remuneration for employment, except for payments specifically excluded by statute or regulation, and certain payments made in the form of goods or facilities customarily furnished by the employer.

Nondiscretionary bonuses must be included in an employee's regular rate of pay. However, nondiscretionary bonus amounts are often determined and paid after the workweeks in which they are earned. Under these circumstances, employers may disregard the bonus when calculating employees' regular rate of pay until the precise amount of the bonus can be ascertained. Once the bonus amount is ascertained, employers must apply it to the workweek during which it was earned. Employers must then calculate and pay any additional overtime compensation due for that workweek. By paying the nondiscretionary bonus as a percentage of total earnings, employers may avoid recomputing an employee's regular rate and the resulting additional overtime premium due.

A **percentage of total earnings** bonus is a method in which an employer pays a bonus as a set percentage of an employee's total gross earnings (e.g., the sum of the employee's total straight-time and overtime earnings). This satisfies the FLSA's overtime requirements since it increases both straight-time and overtime wages by the same percentage, so no additional overtime calculations are needed. Under this method, employers generally calculate total earnings bonuses by:

- Applying a percentage to an employee's total straight-time and overtime earnings without regard to how those earnings or hours compare to those of other employees; or
- Comparing the earnings or hours of each employee participating in a bonus pool to all the employees participating in the pool, dividing each employee's total earnings by the total earnings of all participating employees, and then multiplying that percentage by the bonus pool amount to determine each employee's share.

Employers may also divide the bonus pool amount by the participating employees' total earnings, then multiply that percentage by each employee's total earnings to determine their bonus payout.

Key Highlights

The employer at issue paid a quarterly bonus to eligible employees, including some who worked overtime. At quarter's end, the employer calculated each employee's total gross earnings, including both straight-time and overtime pay, and determined what percentage that number represented of all eligible employees' combined earnings. That percentage was then applied to the available bonus pool to determine each employee's individual payout. No additional overtime was calculated or paid in addition to the bonus. For example, if the available bonus pool is \$100,000 and an employee's total gross compensation amounted to 5% of the total gross compensation to be paid to all eligible employees in the quarter, the employee would receive a \$5,000 bonus. The DOL noted that the employer's quarterly bonus pool program qualified as a percentage of total earnings bonus because the bonus payments automatically included any required overtime premium, and the employer did not need to recalculate the regular rate of pay or pay additional overtime on the bonus.

The DOL also clarified that employers may consider additional factors, such as seniority, job title or performance, when allocating the pool, as long as the resulting percentage increase to each employee's overtime earnings is at least as large as the percentage increase to their straight-time earnings.

Employer Takeaway

Opinion letters provide the DOL's official position on how labor and employment standards apply in specific situations. Employers that rely on opinion letters may be able to establish a good-faith defense under the law. This opinion letter confirms that percentage of total earnings bonuses, if properly structured, comply with the FLSA's overtime requirements. Employers should audit their current bonus plans and structures to ensure they comply with federal, state and local wage and hour laws.