

## DEPARTMENT OF LABOR CLARIFIES “REGULAR PAY” UNDER FAIR LABOR STANDARDS ACT

Effective January 15, 2020, employers will have more flexibility in determining which perks they can include in “regular pay” under the Fair Labor Standards Act (FLSA).

Under the current interpretation, regular pay includes hourly wages and salaries for non-exempt employees, shift differentials, commissions, on-call pay and most bonuses while it has excluded health insurance, paid leave, holiday and other discretionary bonuses, and certain gifts.

The Department of Labor (DOL) has clarified that effective January 15, 2020, employers may exclude the following perks from their calculation of the regular rate of pay:

- Discretionary bonuses
- Certain sign-on and longevity bonuses
- Unused paid leave
- Complimentary office coffee and snacks
- Contributions to benefit plans for accidents, unemployment, legal services and other events that could cause a financial hardship or expense in the future
- Parking benefits, wellness programs, onsite specialist treatments, gym access and fitness classes, employee discounts on retail goods and services, certain tuition benefits, and adoption assistance
- Business expense reimbursement for items such as cellphone plans, credentialing exam fees, organization membership dues, and travel expenses that don't exceed the maximum travel reimbursement under the Federal Travel Regulation system or the optional IRS substantiation amounts for certain travel expenses
- Certain penalties employers must pay under state and local scheduling laws

Employers should review the changes to determine whether any of the clarifications are applicable. For additional information or assistance in reviewing your policies, contact the attorneys at Litchfield Cavo LLP.

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