

DOL Weighs in on Additional Compensation for Professionals

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Your company is headed into a year-end crunch with multiple projects all facing the same December 31 deadline. You decide to compensate your professional engineers for the extra time they'll be putting in over and above their normal 40-hour workweek to meet deadline. But will the hourly rate that you plan to pay for all those extra hours worked turn these professionals into non-exempt employees, requiring you to pay them overtime under the Fair Labor Standards Act?

To help answer this question, the U.S. Department of Labor Wage & Hour Division recently [released an opinion letter](#) that discusses the extent to which employers can offer extra compensation without losing the overtime exemption for such professionals.

Assume that these professional engineers meet both the guaranteed salary and the duties tests for the professional overtime exemption under the law. The regulations permit an employer to pay salaried employees additional compensation, including hourly wages, for "hours worked . . . beyond the normal workweek" without losing the exemption [under certain conditions](#). First, they must receive a guaranteed weekly salary of at least the standard salary level, and second, "a reasonable relationship exists between the guaranteed amount and the amount actually earned." The department measures this "reasonable relationship" in terms of a ratio of the weekly actual earnings compared to the weekly guaranteed salary. When the ratio falls under 1.5:1, the department will generally consider the extra compensation to be "reasonably related" to the employee's usual earnings.

For example, an engineer with a guaranteed weekly salary of \$2,000 for a 40-hour workweek may be paid additional compensation of up to \$1,000 for the work week - on an hourly, daily or shift basis - for hours worked over 40. However, the engineer's total compensation for the week should not materially exceed the ratio of 1.5 times his or her guaranteed weekly salary. If the employee's hours and earnings fluctuate from week to week, the employer may use the individual's average weekly earnings to derive this ratio.

This opinion letter provides helpful guidance to companies to structure compensation arrangements in the face of client, customer and project demands. If you have any questions about this new guidance, please [contact me](#) or any member of the [Barley Snyder Employment Group](#).

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