

U.S. Department of Labor Proposes Changes to Regular Rate of Pay

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After more than 50 years, the U.S. Department of Labor is proposing to update and clarify how employers need to calculate an employee's regular rate of pay. The regular rate is important because nonexempt employees receive overtime pay at least one and one-half times their regular rate. The department noted that compensation practices have evolved significantly over the last half-century, and clarifying what can and can't be used as regular rate of pay allows employers to offer innovative employee perks and benefits without fear of costly litigation.

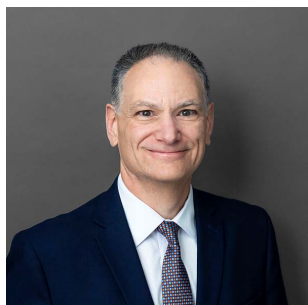
The department proposes that the following will not be included in the calculation of the regular rate:

- Cost of providing onsite treatment such as chiropractors and message therapists
- Gym access, gym memberships and fitness classes on or offsite
- Wellness programs such as health risk assessments, nutrition classes, weight loss programs, etc.
- Employee discounts on retail goods or services
- Tuition programs
- Show up pay and call-back pay
- Discretionary bonuses
- Benefit plans, including accident, unemployment and legal services
- Payments for unused paid leave and bona fide meal periods
- Reimbursed expenses incurred by the employee on behalf of the employer
- Reimbursed travel expenses that do not exceed the maximum amount permitted under the Federal Travel Regulation System and satisfy other regulatory requirements

There is now a 60-day comment period on the proposed regulations, which will close on May 28. The department will then consider the comments submitted before issuing any final regulations. Comments on the regulations can be submitted at www.regulations.gov in the rulemaking docket RIN 1235-AA24.

If you have any questions on these proposed regulations, please [reach out to me](#) or anyone in the firm's [Employment Practice Group](#).

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