

Non-Base Pay Options Discretionary/Non-Discretionary Determination Reference Guide

Bonus Type	Written Agreement	DHRM Interpretation	Period for Calculating Overtime on Bonus (for non-exempt employees)
Employee Recognition Bonuses	No	Discretionary	N/A
In-Band Bonuses	No	Discretionary	N/A
Sign-On Bonus	Yes	Non-Discretionary	Duration of 12 month agreement
Retention Bonus	Yes	Non-Discretionary	Duration of 12 month agreement
Project-Based Incentive Bonus	Yes	Non-Discretionary	Period of time project milestone covers: <ul style="list-style-type: none"> • if quarterly project milestones, the calculation period is each quarter for each payment • if paid annually, the calculation period is the 12 month period
Bonus for Referral of New Employee	No	Non-Discretionary	if the payment is not tied to a specific period of employment, the period is the workweek in which the bonus is paid if the payment is tied to a specified period of employment, the calculation period is the specified period of employment

The Fair Labor Standards Act (FLSA) requires employers who provide bonuses and incentives to employees to determine if those payments are considered discretionary or non-discretionary. The determination of whether the bonus payment is discretionary or non-discretionary is important in determining whether the bonus payment must be applied to overtime hours worked during the time period for which the bonus was earned.

Discretionary bonuses and gifts have no effect on overtime pay requirements. Discretionary bonuses are determined by the sole discretion of the employer and are not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly. The manager approving the award must have the discretion to decide at the end of a period whether to grant the award.

Non-discretionary bonus payments are those that include all bonus payments that do not qualify as discretionary bonuses or as gifts. These payments are planned and may be linked to job performance or other specified factors. The employee can expect payment if conditions are met. Both cash payments and non-cash awards are included in the employee's regular rate if they are non-discretionary. Such non-discretionary bonuses must be applied to overtime hours worked by non-exempt employees during the time period for which the bonus was earned.

References:

[DOL Compliance Assistance - Calculation of Overtime Rates with Bonuses](#)

[Regulations 29 CFR §778.208-212](#)