



Regular Rate of Pay: Non-Exempt Employees

Base Hourly Rate v. Regular Rate of Pay

An employee's *base hourly rate* is what they get paid for each hour worked. The *regular rate of pay* takes into account other earnings, such as non-discretionary bonuses, shift differentials, commissions, piece-rate earnings, the value of meals/lodging, and cash payments in lieu of health benefits. If an employee receives any of these types of earnings, their regular rate of pay becomes *greater* than their base hourly rate. This is significant because the *regular rate of pay* is used to calculate overtime, California paid sick leave, reporting time pay, and meal and rest premium pay for non-exempt employees. The regular rate of pay should never be less than the applicable State or local minimum wage.

Exclusions from Regular Rate of Pay

Certain types of payments are excluded from the regular rate of pay. Examples include: sums paid as gifts for special occasions, expense reimbursements, tips, payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or premium rates* for Saturday, Sunday, or holiday work, and discretionary bonuses.

*Premium rates can only be excluded from the regular rate of pay if the premium rate is at least one and one-half times the employees' same hourly rate they receive for non-overtime hours on other days.

How to determine the Regular Rate of Pay – Maximum Regular Hours

Ordinarily, the hours used in computing the regular rate of pay may not exceed the legal maximum *regular* hours which, in most cases, is eight hours per workday, 40 hours per workweek. This maximum may also be affected by the number of days that one works in a workweek. It is important to determine what "maximum" is compliant in each case.

If you have employees under an alternative workweek schedule (such as four 10-hour days or three 12-hour days), the calculation to figure out the regular rate of pay does not change. It would still be computed on the basis of 40 hours per workweek.

However, a properly implemented alternative workweek schedule may impact overtime pay requirements. For more information, refer to our [Alternative Work Weeks Tool Kit](#).

Calculation Examples

The following are examples of how to calculate the regular rate of pay. *Note that while regular rate of pay calculations can be very complex, your payroll provider may have a system/solution to assist you.*

1. If an employee is paid **one rate of pay** on an hourly basis and earns no bonuses, piece-rate pay, commissions, etc., then the hourly rate is the same as the regular rate of pay. Example: An employee earns \$20 per hour working for their employer and receives no additional compensation in the pay period. Their regular rate of pay is \$20/hour.
2. If an employee receives **piece-rate pay or commissions**, they must be factored into the regular rate of pay, **and all hours worked** are used to calculate the regular rate.

If an employee receives a **non-discretionary bonus**, it must be factored into the regular rate of pay; however, how to calculate the regular rate of pay depends on the type of bonus.

- **Productivity Bonus.** If a non-discretionary bonus is based upon *production or proficiency*, **all hours worked** are used to calculate regular rate of pay.
- **Flat Sum Bonus.** If the non-discretionary bonus is a *flat sum* bonus that is not explicitly linked to performance or production incentives, for example an attendance and/or longevity bonus, then **only straight time hours worked** (not overtime hours) are used to calculate the regular rate of pay.

Productivity Bonus Example:

An employee normally earns \$20 per hour working for their employer and receives a productivity bonus of \$425. In one week, the employee works 40 straight time hours. The employee worked 5 overtime hours, to be paid at time and a half.

- Step One: Calculate Hourly Earnings and Overtime on Hourly Earnings

Straight Time: \$20.00/hour X 40 reg hours = \$800.00

Hourly Overtime: 1.5 X \$20.00/hour X 5 overtime hours = \$150.00

- Step Two: Determine Regular Rate of Pay for Productivity Bonus

Regular Rate of Pay: \$425.00 (Productivity Bonus)/45 **total hours** = \$9.45

- Step Three: Calculate Overtime on Bonus

Bonus Overtime: **.50** X \$9.45 (Regular Rate) X 5 overtime hours = \$23.63

Important Tip: You may be wondering why the regular rate of pay above is multiplied by .50 instead of by 1.5. This is because productivity bonuses are considered earned during all hours worked (*including overtime hours*). As such, the employee has already been compensated at the regular

rate on the bonus for overtime hours. What is left to be paid is the overtime premium (that is, the additional .5) for the overtime hours during the bonus period.

- Step Four: Add all compensation to determine what is owed.

Total Compensation Due: \$800.00 (Straight Time) + \$150.00 (Hourly Overtime) + \$425.00 (Productivity Bonus) + \$23.63 (Bonus Overtime) = \$1,398.63

Flat Sum Bonus Example:

An employee normally earns \$20 per hour working for their employer and receives a flat rate \$80 bonus for attendance. In one week, the employee works 30 straight time hours. The employee worked 5 overtime hours, to be paid at time and a half.

- Step One: Calculate Hourly Earnings and Overtime on Hourly Earnings

Straight Time: \$20.00/hour X 30 reg hours = \$600.00

Hourly Overtime: 1.5 X \$20.00/hour X 5 overtime hours = \$150.00

- Step Two: Determine Regular Rate of Pay for Flat Sum Bonus

Regular Rate of Pay: \$80.00 (Flat Sum Bonus)/30 **regular hours** = \$2.67

- Step Three: Calculate Overtime on Bonus

Bonus Overtime: 1.5 X \$2.67 (Regular Rate) X 5 overtime hours = \$20.03

Important Tip: When calculating overtime when there is a non-discretionary flat sum bonus, the regular rate is multiplied by 1.5 (or 2), because the flat sum bonus is considered earned only during non-overtime hours.

- Step Four: Add all compensation to determine what is owed.

Total Compensation Due: \$600.00 (Straight Time) + \$150.00 (Hourly Overtime) + \$80.00 (Flat Sum Bonus) + \$20.03 (Bonus Overtime) = \$850.03

Piece Rate Pay Example (Rest & Recovery Periods):

3. If an employee is paid by **piece rate**, the employee must be paid an “average hourly rate” for rest and recovery periods, or the applicable minimum wage, *whichever is greater*.

- This means that the employer must calculate the average hourly rate each pay period, and compare it to the applicable minimum wage.

For Example:

An employee works a five day, 40 hour workweek. The employee has two 10-minute rest periods per day, for a total of 100 minutes (1.67 hours) for the workweek. The employee earned a total of \$800 in piece-rate compensation for the workweek. In this case, they must be compensated separately for rest breaks, at the higher of the average hourly rate or minimum wage.

$\$800 / 38.33 \text{ hours (which subtracts out the rest period time)} = \20.87 per hour
$\$20.87/\text{hour} \times 1.67 \text{ hours rest periods} = \34.85
Total Compensation $\$800 + \$34.85 = \$834.85$

In this case, the employee's average hourly rate of \$20.87 will be used, so long as it is greater than the applicable minimum wage.

Note: In other instances, a "group rate" for piece workers is an acceptable method for computing the regular rate of pay. In using this method, the total number of pieces produced by the group is divided by the number of people in the group, with each person being paid accordingly. The regular rate for each worker is determined by dividing the pay received by the number of hours worked. The regular rate cannot be less than the minimum wage. *Consult legal counsel for specifics and application!*

Weighted Average Example:

4. If an employee is paid **two or more rates** by the same employer during the workweek, the DLSE provides that the regular rate is the "weighted average," which is determined by dividing the employee's total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including the overtime hours. For more information, see detailed example below.

For Example:

An employee normally earns \$25 per hour working for their employer and \$20 per hour for travel time. In one week, the employee works 35 hours at the office and spends five hours traveling.

$\$25/\text{hour} \times 35 \text{ hours} = \875
$\$20/\text{hour} \times 5 \text{ hours} = \100
$\$875 + \$100 = \$975$ (total weekly compensation)
$\$975$ divided by 40 hours (total hours) = \$24.38 (regular rate of pay)

Paid Sick Leave

An employer must pay **non-exempt employees** for time taken for paid sick leave using the "regular rate of pay." There are two methods the employer can use to determine sick pay:

- Using the regular rate of pay for the workweek in which the employee uses paid sick time.
- Using the regular rate of pay in the full pay periods of the prior 90 days of employment.

Paid sick time for **exempt employees** is calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Meal & Rest Premium Pay

If an employer does not provide their employee with a sufficient or timely meal, rest, or heat recovery period (if applicable) the employer must pay hourly non-exempt employees "premium pay". The California Supreme Court has clarified that meal and rest premiums must be paid using the employee's "regular rate of pay," as discussed above, not the base hourly rate.

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According to the DLSE, the premium consists of one additional hour of pay at the employee's *regular rate of pay* for any non-compliant meal breaks in one workday, and one additional hour of pay at the employee's *regular rate of pay* for any non-compliant rest breaks for one workday.