



# LEGAL UPDATE

## DOL Revises the Fluctuating Workweek Overtime Method

On May 20, 2020, the U.S. Department of Labor (DOL) [announced](#) a final rule that allows employers to pay bonuses or other incentive-based pay to salaried, nonexempt employees whose hours vary from week to week. The final rule clarifies that payments in addition to the fixed salary are compatible with the use of the fluctuating workweek method under the Fair Labor Standards Act (FLSA).

### The Final Rule

The new rule allows employers to pay bonuses, shift differentials and other incentive payments to employees who are paid under the fluctuating week method. The new rule also establishes that supplemental payments must be included in the calculation of the regular rate, unless excluded under the FLSA.

The DOL anticipates that the new rule will grant employers greater flexibility to provide bonuses or other additional compensation to nonexempt employees whose hours vary from week to week.

To help understand how the new rule works, the DOL has included in the rule illustrations of how these principles apply when an employee receives a fixed salary, a nightshift differential and a productivity bonus.

### The Fluctuating Workweek Method

The fluctuating workweek method provides employers a cost-saving option to compensate employees who are not exempt from the FLSA's overtime wage payment requirements.

Under this method, employers can compensate employees with only half of their regular wage rate for overtime hours if all of the requirements are met.

### Important Dates

#### November 5, 2019

Fluctuating workweek proposed rule was published.

#### December 5, 2019

Comment period on proposed rule expired.

#### May 20, 2020

DOL announced publication of final rule.

*The new rule allows employers to give incentive-based payments to salaried, nonexempt employees whose hours vary from week to week.*

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