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California "Regular Rate of Pay" Refresher

In California, the "regular rate of pay" is a term of art. Calculating it is not necessarily straightforward and much of the law in this area is counterintuitive, so employers should familiarize themselves with the basics to prevent missteps that can result in significant derivative penalties. An employee's regular rate of pay provides the basis for overtime compensation and [meal and rest period premium payments](#) for nonexempt employees. [Cal. Lab. Code § 510](#); *Ferra v. Loews Hollywood Hotel, LLC*, S259172 (Cal. July 15, 2021). Employers sometimes erroneously believe that a nonexempt employee's hourly wage is the employee's regular rate of pay. While the regular rate of pay can sometimes be the same as an nonexempt employee's hourly wage, the correct answer is often more complex, and a series of formulas is required to derive a rate capturing all remuneration for hours worked by an nonexempt employee. Here is a refresher on how an employer should derive an employee's regular rate of pay for a few common compensation types on a weekly basis.

- If an employee earns only hourly wages (sometimes referenced as "straight pay"), the regular rate of pay is the employee's hourly wage.
 - Example: Person A earns \$10/hour. Person A's regular rate of pay is \$10/hour.
- If an employee earns hourly wages and a nondiscretionary bonus, the regular rate of pay is derived by dividing total earnings in a work week (hourly wages and nondiscretionary bonus) by all hours worked (including overtime hours).
 - Example: Person A earns \$10/hour and works 50 hours in the workweek. Person A earns a \$1,000 bonus. Person A's regular rate of pay is \$30/hour and derived as follows: $[(\$10/\text{hour} \times 50 \text{ hours}) + \$1,000 \text{ bonus}] / 50 \text{ hours}$.
- If an employee receives a flat-sum bonus, such as an attendance bonus, the regular rate of pay is derived by dividing total earnings in a work week (hourly wages and nondiscretionary bonus) by all *non-overtime hours* instead of all hours worked. [Alvarado v. Dart Container Corp.](#), 411 P.3d 528 (Cal. 2018).
 - Example: Person A earns \$10/hour and works 50 hours in the workweek (i.e., 40 regular hours and 10 overtime hours). Person A earns a \$1,000 attendance bonus. Person A's regular rate of pay is \$37.50/hour and derived as follows: $[(\$10/\text{hour} \times 50 \text{ hours}) + \$1,000 \text{ attendance bonus}] / 40 \text{ hours}$.

Other compensation structures that trigger complex "regular rate of pay" calculations include commissions, piece-rate pay, varying hourly rates of pay within a workweek, and hybrids of various categories. Given the complexities and developments of California's wage and hour laws, please consult experienced counsel with questions to ensure up-to-date practices.

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