



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF ACCOUNTING

820 SILVER LAKE BOULEVARD
SECOND FLOOR, SUITE 200, (D570C)
DOVER, DELAWARE 19904

FAX: (302) 739-1304

TELEPHONE: (302) 672-5500

MEMORANDUM

TO: Fiscal and Human Resource Representatives

FROM: Karin Faulhaber, Payroll Compliance Group

DATE: March 15, 2022

SUBJECT: **Overtime for Nondiscretionary Bonuses**

The Division of Accounting Payroll Compliance Group (PCG) recently reviewed nondiscretionary bonuses being paid to employees throughout the State. PCG has determined that your current bonuses must be included in the regular rate calculation for overtime for FLSA covered employees. This requirement results in additional overtime owed at the time the bonus is paid that must be manually calculated. You must implement this change immediately for any bonuses paid and retroactively calculate the additional overtime owed for any bonuses that have been paid since October 1, 2021. PHRST will be sending a communication with instructions and tools to pay this additional overtime owed since the system is not configured to perform these calculations.

A bonus is a payment made in addition to employee's regular earnings. Under the Fair Labor Standards Act (FLSA), all compensation for hours worked, services rendered, or performance is included in the regular rate of pay. Examples of nondiscretionary bonuses that must be included in the regular rate of pay include:

- Attendance bonuses
- Sign-on/retention bonuses paid pursuant to a CBA, ordinance, or policy with a claw back provision
- Bonuses announced to employees to induce them to work more efficiently
- Bonuses paid as incentive to work additional shifts

Note: Referral bonuses are discretionary and are not included in the calculation of regular rate.

PHRST will be distributing two spreadsheets, one for a payment that is earned for one pay cycle and the other for a payment where the bonus cannot be identified with workweeks. The regular rate calculation in this instance must be completed for the overtime worked in the weeks covered by the bonus. For example, if a retention/signing bonus is paid after working for six months, the bonus must be apportioned back over the six months to calculate the additional overtime owed.

Please contact PCG at 302-672-5000 with any questions.