

Bonus and HRA Reimbursement Must be Included in Regular Wage Rate

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Practice Area: Labor and Employment & School Law & County and
Municipal Governance & Government Law

A recent district court case in Wisconsin (*Gilbertson v. City of Sheboygan*) found in favor of city employees with regard to FLSA claims involving lump-sum bonus payments and reimbursed medical expenses. Such payments and reimbursements must be included as part of the employees' regular wage rates.

Lump Sum Bonus & HRA Reimbursement

Under the City of Sheboygan's new compensation plan covering non-represented employees implemented after Act 10, an annual performance evaluation determined employees' wage increases. If the wage increase received by an employee resulted in an increase over and above the maximum wage for the employee's classification, the wage increase would be paid as a lump sum. This lump sum payment was not included in the regular rate of pay for purposes of computing an overtime wage rate. The court ruled that under existing case law and the FLSA, bonuses that are based on objective criteria must be included in the regular wage rate.

With regard to HRA reimbursements, the City reimbursed employees for uninsured medical expenses. The court ruled that these reimbursement payments to employees, which are personal to and for the benefit of the employee, must also be included in the employee's regular wage rate for purposes of computing the employee's overtime wage rate.

Impact on Employers

Many employers have adopted new compensation models that incorporate bonus payments based on performance, productivity goals, or other objective factors. When an employer elects to provide nondiscretionary bonuses based on objective criteria, such bonuses must be included in the employee's regular rate of pay. On the other hand, the FLSA regulations generally provide that discretionary bonuses – those paid at the sole discretion of the employer without any expectation of payment by the employee – may be excluded from the regular wage rate. However, as this case demonstrates, whether a bonus is truly discretionary must be carefully analyzed based on the unique facts presented. Now is the time for employers to review compensation models to ensure they are compliant with the FLSA, especially where an employer has promised potential bonus payments.

Even more troubling to employers is the court's decision to include HRA reimbursements in the calculation of an employee's regular wage rate. These reimbursements have not historically been considered part of an employee's regular wage rate. The court's decision appears to hinge upon the very nuanced facts of the case. Thus, employers who make HRA reimbursements to employees should analyze pay practices and consult with legal counsel to determine whether any reimbursements must be included in an employee's regular wage rate.

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