



U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

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**FLSA2009-21**

January 16, 2009

Dear **Name\***:

This is in response to your request for an opinion regarding whether a nondiscretionary safety bonus offered by your client complies with the overtime requirements of the Fair Labor Standards Act (FLSA).<sup>1</sup> It is our opinion that your client's nondiscretionary bonus program, which includes the payment of an overtime premium, meets the overtime requirement of the FLSA.

The company will pay a nondiscretionary safety bonus to employees meeting specific requirements during a designated period. Employees meeting the requirements will receive a set monetary amount for each regular (non-overtime) hour worked. Employees will receive one and one-half times this amount for all overtime hours worked during that period.

An employer must include nondiscretionary bonuses in the regular rate of pay. *See* 29 U.S.C. § 207(e); [29 C.F.R. § 778.208](#). Under [29 C.F.R. § 778.209\(a\)](#):

When the amount of the bonus can be ascertained, it must be apportioned back over the workweeks of the period during which it may be said to have been earned. The employee must then receive an additional amount of compensation for each workweek that he worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of statutory overtime hours worked during the week.

Based on the information provided, the bonus described meets this requirement. The bonus is applied uniformly across all hours worked, and an additional one-half times the bonus rate is paid for all overtime hours. The bonus plan complies with the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending litigation concerning the issues addressed herein. You have also

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<sup>1</sup> Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive materials cited in this letter can be found at [www.wagehour.dol.gov](http://www.wagehour.dol.gov)

represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino  
Acting Administrator

**\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**