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## PROPOSAL TO UPDATE THE FLSA'S REGULAR RATE REGULATIONS

Today, for the first time in over half a century, the U.S. Department of Labor announced a proposed rule to clarify and update the regular rate regulations that define the forms of payment included and excluded when determining workers' overtime rates.

Currently, employers are discouraged from offering more perks that could be vaguely defined in calculating an employees' regular rate of pay. The proposed rule focuses mostly on clarifying whether certain kinds of perks, benefits, or other miscellaneous items must be included in the regular rate.

The following are proposed clarifications that employers may exclude from an employee's regular rate of pay:

- the cost of providing wellness programs, onsite specialist treatment, gym access and fitness classes, and employee discounts on retail goods and services;
- payments for unused paid leave, including paid sick leave;
- reimbursed expenses, even if not incurred "solely" for the employer's benefit;
- reimbursed travel expenses that do not exceed the maximum travel reimbursement under the Federal Travel Regulation System and that satisfy other regulatory requirements;
- discretionary bonuses, by providing additional examples and clarifying that the label given a bonus does not determine whether it is discretionary;
- benefit plans, including accident, unemployment, and legal services; and
- tuition programs, such as reimbursement programs or repayment of educational debt.

Other forms of compensation, including payment for meal periods, "call back" pay, and others, are included in the proposal.

If you are interested, the DOL welcomes comments about the proposed rule electronically at [www.regulations.gov](http://www.regulations.gov). The rulemaking docket is RIN 1235-AA24. To be considered, your comments must be submitted by 11:59 pm on May 28, 2019.

For more information about the proposed rule, you may contact [Jenny Holt Teeter](#) or [Brianna C. Cook](#), or go to [www.dol.gov/whd/overtime/regularrate2019.htm](http://www.dol.gov/whd/overtime/regularrate2019.htm).