



## As Businesses Reopen, DOL Allows Premium Payments Under The Fluctuating Workweek Method

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On May 20, 2020, the Department of Labor announced a [final rule](#) revising its regulation for computing overtime compensation of salaried nonexempt employees who work hours that vary each week.

This final rule is helpful to employers and employees in the current COVID-19 environment, where businesses are increasingly implementing flexible work schedules and utilizing special forms of payment to incentivize and thank employees on the front lines.

The rule clarifies that payments in addition to the fixed salary are compatible with the use of the fluctuating workweek method of compensation under the Fair Labor Standards Act (FLSA).

The “fluctuating workweek method” is an alternative to the FLSA’s regular method of calculating overtime pay. Under the fluctuating workweek method, [assuming certain conditions are present](#), nonexempt employees whose hours fluctuate each workweek receive a fixed weekly salary and an additional 0.5 times their base rate for each hour worked beyond 40 in a workweek.

Previous DOL guidance provided that employee bonuses and other premium payments were inconsistent with calculating overtime under the fluctuating workweek method, which requires that employees receive a fixed salary basis. The final rule changes course and states that employers can pay bonuses, premium payments, or other additional pay, such as commissions and hazard pay, to employees compensated under the fluctuating workweek method.

Importantly, however, these additional payments must be included in the calculation of the regular rate.