

Department of Accounts Payroll Bulletin

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The Payroll Bulletin is published periodically to provide CIPPS agencies guidance regarding Commonwealth payroll operations. If you have any questions about the bulletin, please email payroll@doa.virginia.gov

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Virginia Overtime Wage Act

Impacts of the New Law

The Virginia Overtime Wage Act (VOWA; <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB2063ER>) took effect July 1. Like the Fair Labor Standards Act (<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf>), the Overtime Act obligates employers to pay one and one-half times an employee's regular rate of pay for hours physically worked in excess of 40 in a workweek; however, the difference is in how the regular rate of pay is determined for use in the overtime calculation for **salaried, non-exempt** employees (calculation of overtime for hourly employees remains the same). In addition, the Overtime Act prohibits the accrual of overtime leave for any overtime earned on or after July 1. It also includes changes to the statute of limitations for filing potential claims and the possible damages available and waives sovereign immunity for the Commonwealth as an employer.

Calculations for Hourly or Non- Exempt Salaried

Under the FLSA, an employee's regular rate of pay is the sum of all remuneration for employment (barring certain statutory exclusions) divided by total hours worked in a workweek. The state law employs a different calculation that depends on whether the employee is paid on an **hourly** or a **salary** basis.

For **hourly** employees, the calculation for the regular rate of pay remains the same. It is the sum of the total hours worked times the hourly rate plus any other non-overtime wages paid or allocated for the workweek—not counting the same items that would be excluded from the FLSA calculation—and then **divided by the total number of hours worked in the workweek**.

For non-exempt employees who are **salaried** or paid on some other regular basis, the regular rate of pay is the sum of all regular wages paid for the workweek plus any other non-overtime wages paid or allocated for the workweek—not counting the same items that would be excluded from the FLSA calculation—and then **divided by 1/40** (or multiplied by .025). It does not impact overtime calculations for law enforcement employees in 14, 21 or 28-day work cycles.

Virginia Overtime Wage Act, continued

Compensation Included in Calculations

When a non-exempt employee receives more than one hourly rate of pay, works in more than one position at the same agency at different hourly rates, or receives other payments (such as shift differentials, on-call pay, non-discretionary bonuses, temporary pay, etc.) during the work cycle the amounts must be included in the amount of compensation used to determine the regular rate in compliance with both the FLSA and the VOWA.

Due to a change in the law in 2019 the following types of pay may be excluded when calculating the regular rate of pay:

- the cost of providing certain parking benefits, wellness programs, onsite specialist treatment, gym access and fitness classes, employee discounts on retail goods and services, certain tuition benefits (whether paid to an employee, an education provider, or a student-loan program), and adoption assistance;
- payments for unused paid leave, including paid sick leave or paid time off;
- payments of certain penalties required under state and local scheduling laws;
- reimbursed expenses including cellphone plans, credentialing exam fees, organization membership dues, and travel, even if not incurred “solely” for the employer’s benefit; and clarifies that reimbursements that do not exceed the maximum travel reimbursement under the Federal Travel Regulation System or the optional IRS substantiation amounts for travel expenses are per se “reasonable payments”;
- certain sign-on bonuses and certain longevity bonuses;
- the cost of office coffee and snacks to employees as gifts;
- discretionary bonuses, by clarifying that the label given a bonus does not determine whether it is discretionary and providing additional examples) and
- contributions to benefit plans for accident, unemployment, legal services, or other events that could cause future financial hardship or expense.

Agencies are encouraged to review and become familiar with additional information regarding requirements of the FLSA on the following Dept of Labor fact sheets:

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wdfs23.pdf>

<https://www.dol.gov/agencies/whd/overtime/tools>

<https://www.dol.gov/agencies/whd/overtime/2019-regular-rate>

<https://www.dol.gov/agencies/whd/fact-sheets/regular-rate>

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CIPPS Calculations

Unfortunately CIPPS is currently unable to automatically calculate overtime for salaried, non-exempt employees according to the new calculations. As an alternative, it is recommended that agencies enter or allow their normal overtime transactions to process from TAL and then pay the difference using a new special pay that has been added, VOTWA (094). Another option is to manually calculate the amount due and enter the overtime transaction to show hours and amount (total amount or calculated regular rate). A spreadsheet will be available on the SPO website later this week to assist with calculations. Also note that inclusion of non-productive time is not required according to FLSA or the VOTWA; however, CIPPS does not differentiate between productive and non-productive time in overtime calculations. If the option to add the difference using the special pay code is chosen, see Payroll Bulletin #2013-10 for examples of how to process in CIPPS to ensure that current CIPPS calculations meet FLSA requirements (https://www.doa.virginia.gov/reference/payroll/bulletins/2013/2013_10.pdf).

A comparison of the different calculations is available on the website in the Important Documents section: Virginia Overtime Examples
