

## **Beware the Holiday Bonus!**

By Brigid Heid

Paying holiday bonuses this year? Did your employees work overtime? If so, be sure to understand how the bonus may impact overtime calculations under the Fair Labor Standards Act (FLSA). Delayed payments, such as a nondiscretionary holiday bonus, must be considered for purposes of overtime compensation. A bonus is probably nondiscretionary if employees have come to expect the bonus and can predict the amount of the bonus.

If your company is planning to pay year-end, nondiscretionary bonuses, be sure to retroactively adjust the overtime compensation for any employees who worked overtime during the year.

**EXAMPLE:** Mary is a non-exempt employee at ABC Corporation who is paid hourly. ABC plans to pay Mary a year-end bonus of \$1,500 for 2009 for her 20 years of service. The bonus is paid under a long-standing policy to pay employees year-end bonuses based solely on their length of service. During 2009, Mary worked 2,500 hours (2,000 regular hours and 500 overtime hours). Mary was properly paid all of her overtime during the year.

Now, however, Mary must be paid additional overtime based on the receipt of the year-end bonus of \$1,500.

- Mary's regular rate of pay must be retroactively increased by \$.60 (\$1,500 divided by 2,500 hours).
- Mary should be paid an additional \$.30 (\$.60 divided by 2) for each overtime hour she worked during the previous year.
- Therefore, Mary should be paid an additional \$150 in overtime pay (\$.30 x 500 overtime hours).
- The total payment to Mary at the end of the year will be \$1,650 (\$1,500 longevity bonus plus \$150 additional overtime computed retroactively).

**Practice Pointer:** If your employees are being paid year-end bonuses, make sure you comply with the FLSA in computing the employee's overtime pay. Otherwise, Wage and Hour could leave a lump of coal in your stocking!

For questions regarding overtime or wage and hour laws, please contact Brigid Heid or your CPM attorney.