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On December 16, 2019, the Wage and Hour Division of the U.S. Department of Labor (DOL) published final regulations on “regular rate of pay” for overtime pay purposes under the Fair Labor Standards Act (“FLSA”). The final regulations address common employer-provided benefits as well as other workplace practices, which were not specifically addressed in previous DOL guidance.

Common Employer-Provided Benefits Addressed in DOL Final Regulations

The following benefits are excluded from “regular rate of pay” for overtime pay purposes:

- Employer contributions to an employee’s health savings account (HSA) with a custodian or trustee, when such contributions are communicated to employees.
- Employer contributions to a benefit plan, where the primary purpose of the plan is to provide payment of benefits to employees on account of:
 - death,
 - disability,
 - illness,
 - hospitalization,
 - accident, or
 - legal services.
- Employer’s cost to provide parking benefits to employees (e.g., parking spaces near the business premises of the employer).
- Reimbursements to employees for the following expenses incurred for the employer’s convenience or benefit:
 - cell phone,
 - non-mandatory credentialing exam fees, or
 - organization membership dues.
- Payments for occasional periods when no work is performed, including:
 - family medical leave,
 - military service,
 - voting,
 - attending child custody or adoption hearings,
 - attending funeral services, or
 - any other paid leave required under state or local law.