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## 29 C.F.R. § 548.305

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### Excluding certain additions to wages.

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(a) See § 548.3(e) for authorized established basic rates.

(b) Section 548.3(e) permits the employer, upon agreement or understanding with the employee, to omit from the computation of overtime certain incidental payments which have a trivial effect on the overtime compensation due. Examples of payments which may be excluded are: modest housing, bonuses or prizes of various sorts, tuition paid by the employer for the employee's attendance at a school, and cash payments or merchandise awards for soliciting or obtaining new business. It may also include such things as payment by the employer of the employee's social security tax.

(c) The exclusion of one or more additional payments under § 548.3(e) must not affect the overtime compensation of the employee by more than 40 percent of the applicable hourly minimum wage under either section 6(a) of the Act or the state or local law applicable in the jurisdiction in which the employee is employed, whichever is higher, per week on the average for the overtime weeks.

(1) *Example.* An employee, who normally would come within the 40-hour provision of section 7(a) of the Act, is paid a cost-of-living bonus of \$1300 each calendar quarter, or \$100 per week. The employee works overtime in only 2 weeks in the 13-week period, and in each of these overtime weeks he works 50 hours. He is therefore entitled to \$10 as overtime compensation on the bonus for each week in which overtime was worked (*i.e.*, \$100 bonus divided by 50 hours equals \$2 an hour; 10 overtime hours, times one-half, times \$2 an hour, equals \$10 per week). Forty percent of the minimum wage of \$7.25 is \$2.90 (this example assumes the employee works in a state or locality that does not have a minimum wage that is higher than the minimum wage under the FLSA). Since the overtime on the bonus is more than \$2.90 on the average for the 2 overtime weeks, this cost-of-living bonus would be included in the overtime computation under § 548.3(e).

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