



FLSA2018-11

January 5, 2018

Dear **Name***:

This letter responds to your request that the Wage and Hour Division (“WHD”) reissue Opinion Letter FLSA2009-30. On January 16, 2009, then-Acting WHD Administrator Alexander J. Passantino signed the opinion letter as an official statement of WHD policy. On March 2, 2009, however, WHD withdrew the opinion letter “for further consideration” and stated that it would “provide a further response in the near future.”

We have further analyzed Opinion Letter FLSA2009-30. From today forward, this letter, which is designated FLSA2018-11 and reproduces below the verbatim text of Opinion Letter FLSA2009-30, is an official statement of WHD policy and an official ruling for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259.

I thank you for your inquiry.

A handwritten signature in black ink, appearing to read "Bryan L. Jarrett".

Bryan L. Jarrett
Acting Administrator

Dear **Name***:

This is in response to your request for an opinion regarding whether certain job bonuses must be included in the regular rate under section 7(e) of the Fair Labor Standards Act (FLSA).¹ Based on the information provided, it is our opinion that the job bonuses should be included in the regular rate.

Your client, an oilfield services company, provides cementing, acidizing, fracturing, sand control, and other services for drilling and completion of oil and gas wells and remedial work on existing wells in the petroleum industry. The company employs non-exempt equipment

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

operators who are paid an hourly wage above the minimum wage and overtime wages for hours worked in excess of 40 hours per week. Generally, equipment operators operate commercial vehicles, such as tractor trailers, semi trucks, and/or tanker trucks on a daily basis between district offices and customers' oil and gas well locations to deliver company products, service tools, and equipment. Equipment operators generally load and unload the vehicle; participate in rigging the equipment at the customer's worksite, such as connecting hoses and high pressure pipes to equipment at the customer's wellhead; and operate the equipment for the desired service at the well site.

The company wishes to pay its equipment operators, in addition to hourly wages, a "job bonus," consisting of a flat dollar amount per day (*e.g.*, \$100.00 for each day worked). The "job bonus" would be paid for each day worked, and does not appear to be conditioned on any other factor. You ask whether such a bonus should be included in the regular rate.

With limited exceptions, the FLSA provides that the "regular rate" includes "all remuneration for employment paid to, or on behalf of, the employee." 29 U.S.C. § 207(e). The proposed job bonus meets none of the exceptions for being excluded from an employee's regular rate of pay and, therefore, must be included in the regular rate.² *See* 29 U.S.C. § 207(e)(1) - (7).

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino
Acting Administrator

***Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**

² In reaching this conclusion, we express no opinion as to whether the equipment operators are eligible for any of the minimum wage and/or overtime exemptions provided by the Act, including, but not limited to, the exemption provided under 29 U.S.C. § 213(b)(1).