

# CALCULATING OVERTIME (OT) – CERTIFIED PAYROLLS GUIDANCE

## DEFINITIONS

- **Wage Determination** is the list of *basic hourly wage rates* and *fringe benefit rates* for each classification of laborers and mechanics (“labor classification”) in a predetermined geographic area for a particular type of construction. WHD conducts surveys of local wages to determine the prevailing wage rates that are included in wage determinations. Different ways of meeting wage determination obligations: [29 CFR 5.31\(b\)](#).
- **Davis-Bacon Prevailing Wage** is the combination of the *basic hourly wage rate* and *any fringe benefits rate* listed for a specific classification of workers in the applicable Davis-Bacon wage determination. The contractor’s prevailing wage obligation may be met by either paying each laborer and mechanic the applicable prevailing wage entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits.
- **Basic/Regular Hourly Rate of Pay (aka Basic Cash Wage)** is the *Davis-Bacon Prevailing Wage*, the cash payment made directly to the individual which does not include fringe benefits ([29 CFR §5.24](#)). It is the straight time hourly rate - generally the amount listed in the "RATE" column, apart from the fringe benefit amount (if any) listed for a classification in the wage determination. **The basic rate cannot be less than the basic hourly rate required in an applicable wage determination.**
- **Regular/Basic Straight-Time Hourly Rate (aka Regular Rate of Pay)** means the hourly rate of payment that does not include overtime rates or premium rates. It’s calculated by dividing an individual’s weekly rate of pay by the number of hours worked each week.
- **Base Overtime Rate** is *basic hourly rate of pay* multiplied by *one-half premium of the basic/regular hourly rate of pay* for hours worked more than 40 hours in a workweek. Amounts paid by a contractor or subcontractor for fringe benefits are excluded in the computation of the base overtime rate. Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination ([29 CFR §5.32](#); [CWHSSA](#)).
- **Hourly Prevailing Overtime Wage Rate (aka Minimum Overtime Rate)** is the base overtime rate plus cash fringe.
- **Rate of contribution or cost for fringe benefits** is ordinarily an hourly rate and will be reflected in the wage determination as such.

## REQUIREMENTS

- Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds, or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.
- A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments, or incurring costs for “bona fide” fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a

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combination thereof (29 CFR 5.31(a)). Such a cash equivalent is excludable in computing the regular or basic rate.

- Each weekly statement required under §3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period §3.4(a).
- Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract §3.4(b). Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors §5.5(3)(ii)(A).
- Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract §5.5(3)(ii)(B).
- The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution, a fine, possible imprisonment of not more than 5 years, or both under section 1001 of title 18 (18 U.S.C. § 1001) and section 231 of title 31 of the United States Code §5.5(3)(ii)(D).
- Properly filled out Form 347 satisfies the requirements of Regulations, Parts 3 and 5 ([29 C.F.R., Subtitle A](#)), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.
- **Work classifications must be accurately recorded on certified payrolls.** If an individual is working in more than one classification, an accurate breakdown of hours worked in each classification must show.
- **When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate.** For example, "\$3/.50" would reflect a \$3 base hourly rate plus \$0.50 for fringe benefits. This is of assistance in correctly computing overtime.
- In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits.

### EXAMPLES AND CALCULATIONS

#### EXAMPLE #1 – PAYING BASIC HOURLY RATE OF PAY AND CASH FRINGE BENEFIT (29 CFR 5.32(C)(1))

X contractor pays his laborers \$3.50 in cash under a wage determination of the USDOL which requires a *basic hourly rate of \$3* and a *fringe benefit contribution of 50 cents*. The contractor pays the *50 cents in cash* because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of \$3.00 an hour.

**OT Calculation:**  $\$3.00 \text{ basic hourly rate of pay} \times 1.5 \text{ half time premium on the basic hourly rate} =$   
 $\$4.50 \text{ base OT rate} + \$0.50 \text{ cash fringe} = \$5.00 \text{ minimum overtime rate}$

The overtime rate shall be not less than the sum of the basic rate, plus the half time premium on the base/regular rate, plus the required fringes at the straight time rate:

**(Base rate x 1.5) + fringe amount = minimum overtime rate.**

IMPORTANT: Contractor must indicate the split between the hourly base rate and cash fringe under the “Rate of Pay” column (6) of the [WH Form 347](#) for straight time and the minimum hourly prevailing overtime rate for overtime. On page 2 of the Form 347 contractors must indicate that they are paying a cash fringe under 4(b).

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On the line designated “ST,” list base/regular hourly rate paid to the employee for straight time worked.  
On the line designated “OT,” show overtime hourly rate paid.

OT. OR ST.	(4) DAY AND DATE						(5)	(6)		(7)
	HOURS WORKED EACH DAY						TOTAL HOURS	RATE OF PAY		GROSS AMOUNT EARNED
O		2.00			2.00		4.00	\$5.00		\$160.00
S	8.00	8.00	8.00	8.00	8.00		40.00	3.00	0.50	

40 hours x 3.00 = \$120.00 ST wages  
 4 hours x 4.50 = \$18.00 OT wages  
 44 hours x .50 = \$22.00 cash fringe  
 Total = \$160.00

**EXAMPLE #2 – PAYING A BASIC HOURLY RATE AND BONA FIDE FRINGE BENEFIT (29 CFR 5.32(C)(3))**

The X construction contractor has been paying \$3.25 an hour to a laborer as his *regular/basic straight time hourly rate (aka regular rate)* plus 50 cents an hour as a contribution to a welfare and pension plan. The laborer is being reassigned to a federal-aid project where the prevailing wage is \$3 an hour and a *fringe benefit* contribution of 50 cents. The *regular/basic straight time hourly rate (aka regular rate)* for overtime purposes in this case is \$3.25, the rate actually paid as a *basic cash wage* for the employee of X, rather than the \$3 *basic rate* determined as prevailing by the prevailing wage determination.

**OT Calculation:** \$3.25 *regular/basic straight time hourly rate (aka regular rate)* x **1.5 half time premium on the basic hourly rate** = \$4.88 *minimum overtime rate*

**IMPORTANT:** The contractor must not reduce the cash wage to any amount below \$3 an hour, i.e., \$2.75 basic cash wage and \$1 fringe benefit an hour. the cash payment is not excludable in calculating overtime compensation (29 CFR 5.32(c)(3)).

If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show *regular/basic straight time hourly rate (aka regular rate)* paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

**EXAMPLE #3 – PAYING A BASIC HOURLY RATE OF PAY AND NO FRINGE BENEFITS**

ABC contractor pays a laborer who works on a non-federal-aid project \$3.50 as his straight time cash wages (basic rate), with *no fringe benefits*, and decides to reassign the laborer to a federal-aid project which requires a *basic hourly rate of \$3* and a *fringe benefit contribution of 50 cents*. In this case, OT will be calculated based on the indicated straight time cash wages.

**OT Calculation:** \$3.50 *basic hourly rate of pay* x **1.5 half time premium on the basic hourly rate**  
 \$5.25 *minimum overtime rate*

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O		2.00			2.00			4.00	\$5.25		\$161.00
S	8.00	8.00	8.00	8.00	8.00			40.00	3.50	0.00	

$$\begin{aligned}
 40 \text{ hours} \times 3.50 &= \$140.00 \text{ ST wages} \\
 4 \text{ hours} \times 5.25 &= \$21.00 \text{ OT wages} \\
 44 \text{ hours} \times .00 &= \$00.00 \text{ fringes paid in cash} \\
 \text{Total} &= \$161.00
 \end{aligned}$$

**IMPORTANT:** Contractor must clearly indicate on certified payrolls and the Statement of Certification whether the basic rate is in lieu of a fringe benefit or is simply part of their straight time cash wage (basic rate). The basic rate must be above the basic rate for the classification listed in the wage determination. If paying fringe benefits 4a and/or 4b on the Statement of Certification must be selected. Selecting 4a needs requires a breakdown of the benefits. Any exceptions should be noted in section 4(c).

**EXAMPLE #4 - DIFFERENT JOB CLASSIFICATIONS AND AT DIFFERENT RATES OF PAY**

Overtime premium pay required under CWHSSA and/or FLSA for an employee who worked in different job classifications and at different rates of pay in the same work week is necessary. **Contractors should determine the straight time wages due – excluding fringe benefits, calculate what the Laborers “regular rate” would be, and compute the overtime premium** or pay the highest overtime wage due between the two.

If a worker worked 30 hours at the laborer’s rate of \$5.00 and 18 hours at an electrician’s rate of \$10.00 you would need to find the premium rate between the two.

$$\begin{aligned}
 30 \text{ hours} \times 5.00 &= \$150.00 \\
 18 \text{ hours} \times 10.00 &= \underline{\$180.00} \\
 \text{Total} &= \$330.00
 \end{aligned}$$

\$330.00/48 hours = \$6.89 basic hourly rate of pay

½ (6.89) x 8 overtime hours worked = \$27.56 in additional wages for overtime.