

New York Federal Court Upholds Payment of Overtime Pursuant to Fluctuating Workweek Method Notwithstanding Bonus Pay

Article By:

Noel P. Tripp

Uncertainty and litigation have ensued in the wake of the Department of Labor's May 5, 2011 Final Rule regarding application of the fluctuating workweek method of overtime compensation (FWW) authorized by 29 CFR § 778.114, specifically the Rule's commentary on the payment of incentive compensation to employees compensated via FWW. In a thorough recent decision, Judge Paul Engelmayer of the Southern District of New York ruled that the DOL's Final Rule did not substantively change the FWW rule, and specifically does not operate to forbid use of such overtime payment method with employees who receive performance-based bonuses. *Wills, et al. v. Radioshack Corporation*, S.D.N.Y., No. 13-cv-2733, 11/07/13.

Wills concerned solely the FWW-paid store manager's claim that RadioShack's payment of performance-based bonuses invalidated the fluctuating workweek method under the Final Rule for purposes of his claim for alleged miscalculated overtime under the New York Labor Law. After noting that FLSA principles govern the analysis under New York state law, Judge Engelmayer examined the Final Rule and the relevant authority cited therein concerning payment of incentive compensation to FWW employees. Concluding that the focus in case law was on payment of additional *hourly* compensation to FWW workers (such as day off pay, holiday pay, sea pay or shift differential), Judge Engelmayer rejected the broader language in the Final Rule purporting to forbid performance bonuses due to its "considerable tension with the . . . more targeted reasoning and case citations" regarding FWW and additional hourly pay. Accordingly, the Court concluded that RadioShack's payment of bonuses based on store performance and other metrics did not run afoul of the FWW, and thus no additional overtime was due.

Employers must regularly monitor legal developments, including DOL enforcement positions, with counsel and respond accordingly.

Jackson Lewis P.C. © 2025

Source URL: <https://natlawreview.com/article/new-york-federal-court-upholds-payment-overtime-pursuant-to-fluctuating-workweek-met>