

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

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IN REPLY REFER TO:

July 14, 1988

Mr. Rexford C. Simpson
Regional Personnel Relations Attorney
J.C. Penney Company, Inc.
6131 Orangethorpe Ave.
Buena Park, CA 90624

Dear Mr. Simpson:

This is in reply to your letter of July 7, 1988, regarding the payment of a bonus on a monthly basis under the provisions of Labor Code Section 204.

A bonus may be paid monthly if the bonus plan or agreement indicates the bonus is earned and calculated each month. Once the bonus is "earned" it should be paid in accordance with the requirement of Section 204, ie. on the next pay day.

The bonus need not be paid until the employee has fulfilled his or her obligations under the plan, at which point Section 204 governs when payment is due.

Offering a bonus plan to sales persons may involve overtime or premium wages if the affected employees work more than 8 hours per day or 40 hours per week, unless they are exempt from the overtime requirements under Industrial Welfare Commission Order No.7-80, Section 3(C). If they are not exempt, any bonus paid must also be included in calculating the overtime portion of their wages (if overtime is worked).

The method of calculating the overtime rate of bonus pay is to divide the amount of the bonus by the number of hours worked (including the overtime hours), to determine the regular hourly rate of bonus pay, then multiply one-half the regular rate of bonus pay times the number of overtime hours worked. This amount will be the overtime amount due on the bonus portion of the earned wages, and should be paid in addition to any hourly overtime.

I hope this answers your questions; if not, please let me know.

Very truly yours,

Lloyd W. Aubry, Jr.
State Labor Commissioner