# U.C. Chamber of Commerce

# Spring 2019 LRC Meeting

# Outline for Comments on the Part 778 NPRM

# *Due: June 12, 2019*

## Proposed Excludable Compensation

* The Chamber supports the Department’s proposal to excluded additional types of compensation from the regular rate and overtime compensation, including:
	+ Payout of unused sick pay
	+ Reimbursable business expenses “primarily”, rather than “solely”, for the convenience of the employer
	+ Employee discounts
	+ Tuition reimbursement
	+ Penalties under state laws (e.g., predictive scheduling)
	+ Employee-of-the-month awards
	+ Bonuses to employees for unique or extraordinary efforts

## Additional Excludable Compensation

* The Chamber will also request that the Department clarify that the following additional types of compensation are excludable from the regular rate and overtime compensation:
	+ Relocation expenses
	+ Point reward programs (employees awarded points redeemable from a third party for merchandise)
	+ SPIFFs (payments from third parties for selling its products)
	+ Discounts to third-party services, products or memberships
	+ Discounts on the purchase of company gift cards
	+ Repayment of student loans
	+ Public transportation subsidies
	+ Childcare services or subsidies
	+ Adoption assistance
	+ Domestic partner benefits outside a traditional benefit plan
	+ Cash in lieu of benefits
	+ Employer-provided meals
	+ Prizes for voluntary participation in an employer-sponsored contest open only to employees
	+ Value of the chance to win a prize in a raffle/drawing
	+ “Spot” bonuses
	+ Referral bonuses
	+ Sign-on bonuses
	+ De Minimis non-cash awards (lunch, coffee cups, pens, etc., FMV of $20 or less)
	+ Payments pursuant to self-funded health and welfare plans
	+ Contributions to 401(k) and other ERISA-qualified plans
	+ Restricted stock units (RSUs)

## The Fluctuation Workweek

* The Chamber supports the Department’s clarification that, because compensation practices can vary significantly and are constantly changing, the overtime calculations examples in Part 778 are just that – examples, and not exclusive.
* The Chamber will propose that the Department revisit the 2008 NPRM’s proposed language to provide that non-exempt employees paid on the fluctuation work week may also be paid bonuses and commissions as long as overtime is also paid on bonuses and commissions as required.
* The Chamber will also propose that the Department modify the regulations on piece rate to clarify that employees paid on a piece rate may also be paid bonuses and commissions as long as overtime is also paid on bonuses and commissions as required.