# 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.