

BENEFITS LAW

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Federal Appeals Court Confirms the Obvious: “Salary” Does Not Include Fringe Benefits

By Ted Boehm and Michele Solari

In this article, the authors discuss a recent federal circuit court decision that is “great news” for employers in New Jersey, Pennsylvania, and Delaware and that also should provide comfort to employers in other jurisdictions.

A federal appeals court has ruled that paid time off (PTO) is not a part of an employee’s salary under federal wage and hour law, shutting down an inventive attempt by plaintiffs’ attorneys to find a new way to assert wage and hour claims against employers. The decision by the U.S. Court of Appeals for the Third Circuit in *Higgins v. Bayada Home Health Care Inc.* handed a win to employers by giving the go-ahead under federal law to deduct fringe benefits from exempt employees if they fail to meet productivity quotas – as long as the deductions do not affect their guaranteed base salary. The appeals court correctly found that an employee’s base salary is distinguishable from PTO – a fringe benefit – allowing employers to deduct from such fringe benefits under federal law without affecting employees’ overtime-exempt statuses.

Although the outcome is good for employers, especially those in New Jersey, Pennsylvania, and Delaware, the fact that the case was

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filed at all is a good reminder that plaintiffs' attorneys are looking for any wage hour vulnerability they can exploit through litigation.

COMPANY PRODUCTIVITY POINT SYSTEM LEADS TO DISPUTE

Stephanie Higgins is a registered nurse and former employee of Bayada Home Healthcare, a New Jersey-based company that provides medical and related support services for patients in their homes in 23 different states. Bayada classified Higgins and other employees like her as overtime exempt employees under the federal Fair Labor Standards Act (FLSA) based on their job duties and because they were paid on a salary basis.

The affected employees were required to meet weekly "productivity minimums" and accumulate a specific number of "productivity points" per week. Each productivity point was equivalent to 1.33 hours of work, awarded in exchange for completing work tasks.

When Bayada employees exceeded their productivity minimums, they received additional compensation. If the employees failed to meet their weekly productivity minimums, Bayada made deductions from their available PTO to supplement the difference between the points they were expected to earn and what they actually earned.

Higgins and her coworkers were upset that Bayada could make deductions from their base salary if they failed to meet their weekly productivity minimums and lacked sufficient PTO to cover the productivity point deficit. They argued that these potential deductions "destroyed" the requirement that they be paid on a salary basis in order to be exempt – and thus violated the FLSA. It is this dispute that led to their lawsuit – and the Third Circuit's decision.

WHY DO BASE SALARY DEDUCTIONS MATTER?

Under the FLSA, employees are entitled to be paid a minimum wage for all hours worked, and 1.5x their regular rate of pay if they work more than 40 hours in a work week. However, the FLSA exempts from its overtime requirement individuals "employed in a bona fide executive, administrative, or professional capacity."

Exempt employees must perform certain job duties and must be paid on a "salary basis," meaning that the employee regularly receives a predetermined amount of pay period on a weekly, or less frequent basis, without reductions for quality or quantity of work performed.

Failure to pay such employees on a salary basis causes the employees to lose their status as exempt workers, thus entitling them to overtime pay requirements.

If Bayada did deduct from its exempt employees' base salaries to make up for productivity deficits, the deductions would directly affect their exempt status, as their base salary would become dependent on the quantity of time worked. As a result, the employees would no longer be considered exempt, and instead be entitled to overtime pay – 1.5x their regular rate of pay – for any hours worked in excess of 40 hours per week.

COURT CONFIRMS THE OBVIOUS

The court unanimously rejected Higgins' arguments in their entirety, correctly finding that PTO is a fringe benefit and not part of a salary. It reasoned that PTO does not impact an employee's base wages or salary that they are regularly paid where a salary is a fixed amount of compensation regularly received. Employees do not receive more or less money in their paychecks depending on whether they have or have not used their PTO time in any given pay period – there is no correlation between the two.

As a result, the Third Circuit found the key issue in determining whether the classification of an exempt employee is proper under the FLSA is whether an employer actually makes a deduction from an employee's base salary – not whether it threatens to do so. Here, there was no evidence that Bayada actually deducted from an employee's base salary when they lacked sufficient PTO to cover a productivity point deficit. As a result, the court found the employees were properly classified as exempt workers and thus not entitled to overtime pay.

In essence, the Third Circuit held that an employer does not violate the FLSA when it deducts from an employee's PTO as long as their predetermined base salary is not affected by the deduction.

WHAT DOES THIS MEAN FOR EMPLOYERS?

This case is great news for employers in New Jersey, Pennsylvania, and Delaware, as it is now controlling law. Employers in other jurisdictions should take heart from the ruling as well, as it is possible that other federal appeals courts would look favorably on the logic the Third Circuit used to render its decision and mimic its decision.

This case also serves as a good reminder for employers everywhere to check your pay practices to ensure you are not inadvertently

making unlawful deductions from your employees' salaries that may affect exempt statuses. Doing so could put you at risk of converting exempt employees into the non-exempt category, which would require payment of overtime wages for any hours worked in excess of 40 hours per week.

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