



Non-Exempt Employees Can Agree To A Salary That Includes Overtime

Insights

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A California appellate court ruled that Labor Code section 515 does not outlaw clear wage agreements that provide for salaries that include fixed amounts of overtime. *Arechiga v. Dolores Press, Inc.*

This case involved a janitor who sued his former employer, Dolores Press, for additional overtime wages. Arechiga had orally agreed to work eleven hours a day and six days a week for a total of sixty-six hours per week. In addition, the parties had executed a written agreement which provided that "Employee shall be paid a salary/wage of \$880.00" weekly. The word "salary" had been circled.

When Dolores Press subsequently terminated Arechiga's employment, he sued, claiming that it owed him unpaid overtime because his weekly salary of \$880.00 only compensated him for a regular workweek of forty hours at a base rate of \$22.00 per hour. Arechiga therefore argued that he was entitled to unpaid overtime of 26 hours at the overtime premium rate for each workweek during the statutory period.

In support of his argument, Arechiga relied upon Labor Code section 515(c). That provision states that "for the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

Dolores Press responded by arguing that under California's "explicit mutual wage agreement" doctrine, parties may agree to a guaranteed fixed salary so long as the employer pays the employee for all overtime at a rate of at least one and one half times the employee's base rate of pay. The trial court entered judgment for Dolores Press, which has now been upheld on appeal.

In upholding the trial court's decision, the court of appeals rejected Arechiga's argument that Labor Code section 515 prohibits explicit mutual wage agreements. Although judicial opinions concerning these agreements predated the passage of Labor Code section 515, the court reasoned that it could find no case law supporting Arechiga's position. Furthermore, the appellate court expressly rejected a provision from the Labor Commissioner's Enforcement Policies and Interpretations Manual which purported to interpret Labor Code section 515 as rejecting explicit mutual wage agreements.

Although this case is good news for employers, you should still require non-exempt employees to document all hours worked, including meal periods, and seek legal assistance before attempting to draft any compensation agreement building overtime into a salary.

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