



Appellate Court Attacks Piece-Rate Compensation – Again

Insights

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The piece-rate compensation system, common among automotive technicians, agricultural workers, manufacturing employees, truck drivers, and others, has been a viable and rewarding form of compensation in California for over a century. But for the second time in three months a California appellate court has created a new requirement for employers using piece-rate compensation systems. The California Court of Appeal held that employers must *separately* compensate piece-rate employees for rest breaks. *Bluford v. Safeway*.

The Facts

Safeway, a large grocery chain, employed a team of truck drivers to complete deliveries. It compensated the drivers primarily based on miles driven – a classic form of piece-rate compensation. Drivers were given regular and timely rest breaks. The issue before the appellate court was whether the compensation arrangement separately compensated employees for rest breaks.

Safeway argued that state law did not require employers who use a piece-rate or incentive-based compensation system like Safeway's to put employees on the clock just to pay separately for rest periods, but considered pay for rest periods to be part of the overall piece-rate compensation. The court disagreed, maintaining that piece-rate compensation could not be averaged over non-piece rate idle time, and on this basis concluded that the breaks were unpaid.

The court held that “a piece-rate compensation formula that does not compensate separately for rest periods does not comply with California minimum wage law.” The Court based its ruling in part on a broad reading of the Wage Order requiring that “[a]uthorized rest periods shall be counted as hours worked for which there shall be no deduction from wages.”

No other California Court has ever required employers to provide piece-rate employees with separately paid rest breaks, and no statute explicitly requires it. The *Bluford* decision, which appears to be result driven, credits the advocacy position taken by plaintiff attorneys to harvest minimum-wage claims from historically-unavailable sources.

Indeed, the court implicitly disregarded the fact that piece-rate employees might earn far in excess of the state minimum wage even after considering the time spent on rest breaks and the fact that rest breaks may well increase piece-rate compensation by “lessening employee fatigue” (the

opinion of a former California Labor Commissioner).

The Fallout

The good news is that proactive employers may not need to do much. A few months ago, an appellate court determined that piece-rate compensation systems were required to effectively compensate a piece-rate employee separately for all delay time when the employee was not engaged in piece work. *Gonzalez v. Downtown L.A. Motors*. Interestingly, that court declined to address whether rest periods constituted such delay time that was subject to separate compensation.

In response to *Downtown L.A. Motors*, many employers modified their pay plans to provide a base hourly rate that compensates formerly piece-rate employees for all on-the-clock hours in addition to a bonus to reward employees for production. Under this alternative approach, which dismantles pure piece-rate compensation, the base hourly wage is paid before additional pay in the form of a bonus is awarded.

As long as the base rate is at least at the statutory minimum levels, employers can argue that this leaves no doubt whether each and every clock hour, including rest breaks, are compensated. Thus, employers who have not updated their pay plans have yet another reason to do so, and should do it immediately.

Will It Get Worse?

The *Bluford* decision applies only to nonexempt employees on piece-rate systems of compensation, but the larger problem with *Bluford* is the issue of whether its rationale, if unchecked, will be expanded to other forms of production- or incentive-based compensation.

Recent developments in the case law suggest that this is already beginning to occur. Although the *Bluford* decision may be appealed and reversed, this outcome is uncertain. As noted above, employers taking a preemptive approach should consider the benefits of clarifying or modifying their pay plans for nonexempt employees on incentive-pay systems to make clear that the pay structure covers all hours worked.

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