



Common Cents: New Trend of Wage Statement Wins for Employers in California and Federal Courts

Insights

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The hyper-technical nature of California's wage statement laws, embodied in Labor Code section 226, have made violations of this law a favorite of the plaintiffs' bar for class and representative actions under the Private Attorneys General Act (PAGA). The law requires wage statements to cover nine specific categories of information, among other things, and even scrupulous and well-intentioned employers can find themselves defending against pay-statement claims with plaintiffs seeking damages in the millions of dollars. But in a rare bit of good news for employers, recent California and federal court cases are showing a trend giving employers some relief in this area. Several courts have taken a dim view of these section 226 claims and rejected plaintiffs' often convoluted arguments in favor of a common-sense reading of the statute. This article summarizes two recent cases, among several others, flagging this very welcome trend.

California Court of Appeal Rules Wage Statements Displaying Overtime Premium at 0.5x Rate Does Not Run Afoul of Section 226

In *General Atomics v. Green*, an employee sued General Atomics claiming it failed to provide accurate wage statements because its wage statements identified an overtime premium at 0.5 times the regular rate of pay rather than 1.5 times the regular rate. The trial court sided with the employee and denied General Atomics' motion for summary judgment on the issue. The employer appealed the decision and laid out a common-sense argument in its own defense. To understand its argument, it is helpful to have a basic refresher on this area of law.

In California, when employees are paid multiple hourly rates of pay, overtime is paid at the blended rate, which requires total wages from both rates to be totaled before application of the overtime premium. Overtime is then paid as an additional premium, or 50% of the blended regular rate.

For example, if an employee works 50 hours in a work week (assume 10 hours overtime), with 20 hours paid at \$20, and 30 hours paid at \$30 per hour, the employee has earned a total of \$1,300 for base wages $[(20 \times \$20) + (30 \times \$30)]$. Base wages for purposes here is defined as all wages owed without the overtime premium. See *the 2018 case of Alvarez v. Dart Container Corp.* The total base wages are divided by total hours worked, yielding a regular blended rate of \$26.00 $(\$1,300 / 50 \text{ hours})$. Because this "base" compensation represents the 1.0 component of total compensation, overtime is paid as a premium beyond the base, which represents the 0.5 portion of 1.5 times the

regular rate (sometimes called a 50% premium) – which in this example is \$130.00 (\$13.00 x 10 overtime hours).

In reporting the premium payment, employers like General Atomics would argue that the most straightforward method of reporting regular and overtime compensation would be to break out the rates used at each step of the blended rate overtime calculation. However, there is just a little wrinkle flagged by the plaintiff in *General Atomics*. By so doing, some of the hours will be reported twice because some are paid at 1.0 times the full regular rate (1.0) and others at the overtime premium rate (0.5) or half that regular rate, discussed above. This nuance can be resolved simply by reporting all hours worked. Although more detailed than the charts in *General Atomics*, the pay statement for the above examples may look like this:

Description	Hours	Rate	Total
Base Wages (Rate 1)	20	\$20.00	\$400.00
Base Wages (Rate 2)	30	\$30.00	\$900.00
Total Hours / Base Wages	50	\$26.00	\$1,300.00
Overtime Premium	10	\$13.00	\$130.00
Double Time Premium	0	\$26.00	\$0.00
Total Wages			\$1,430.00

The employer’s writ of mandate appealing the trial court’s adverse ruling turned out to be a good move. The California Court of Appeal (Fourth Appellate District) granted General Atomics’ writ of mandate and held the trial court erred by determining that the wage statements violated section 226.

Notably, the employee-plaintiff in *General Atomics* earned multiple rates of pay during a single pay period, triggering the blended regular rate calculation in determining overtime due. The wage statements provided by General Atomics correctly identified the standard hourly rates, with the total number of hours worked at each rate, and then identified separately the 0.5x overtime premium and the number of overtime hours worked at that rate.

On May 28, 2021, the appellate court sided with the employer, citing a previous California Supreme Court case. It reasoned that “the core purpose of section 226 is to ensure an employer documents the basis of the employee compensation payments to assist the employee in determining whether he or she has been compensated properly.” Applying this standard, the court further held that General Atomics’ wage statements complied with section 226 and allowed its employees to verify that the employer correctly calculated both the statutory regular rate of pay and the employee’s total pay.

In doing so, the court recognized that the most straightforward way of displaying the required information can differ depending on the employer's specific pay scheme. And looking to the blended rate scenario, the court noted that, when an employee earns multiple standard hourly rates during a single pay period, showing a 1.5x overtime rate on a wage statement would actually make it *more* difficult for an employee to calculate their overtime rate of pay and total compensation as opposed to the simple step of displaying the 0.5 overtime premium rate.

Federal District Court Holds Wage Statements with Lump Sum Meal Period Premium Payments Do Not Violate Section 226

In *Santos v. United Parcel Service Inc.*, a certified class argued that UPS's wage statements were unlawfully ambiguous because the meal period premium payments were displayed in a lump dollar sum, so that the statements did not show the hours or number of premiums paid or the corresponding rate.

On June 7, 2021, the district court of the Northern District of California ruled in the employer's favor and granted UPS's motion for summary judgment on the wage statement claim. Once again, the court identified the core purpose of section 226 as ensuring that employees are adequately informed of how their compensation is calculated. The court concluded that meal period premium payments are an "after-the fact adjustment" to compensation based on the number of meal periods missed in a particular pay period. The court held that adding numbers to the "rate" and "hours" columns on the wage statements for the meal period premiums would not promote transparency and would instead only serve to confuse employees.

The court also reiterated a common-sense "simple math" standard for wage statements found in earlier cases. In evaluating 226 claims, courts will generally find no violation when the employee needs only to perform simple math with the information displayed on the wage statement to determine the required data, such as adding up the hours worked at each rate to determine the total hours worked. Since UPS's wage statements included the employee's hourly pay rate and the gross lump sum figure for the meal premium payments, employees could perform simple math and divide the lump sum amount by their current pay rate to arrive at the number of hours of meal premium payments they were receiving for a particular pay period.

Takeaway for Employers

The *General Atomics* and *Santos* decisions, among others, demonstrate an encouraging shift in the courts with respect to wage statement claims. Namely, despite creative arguments by plaintiffs, both state and federal courts are developing a willingness to accept common sense, straightforward approaches to wage statements. The decisions also serve as a reminder that while section 226 is hyper-technical, the ultimate purpose of the wage statement requirements is to allow employees to understand how they are paid. The common thread between the cases is that the plaintiffs' interpretations of the wage statement legal requirements would only have served to confuse employees rather than provide transparency on how employee pay is calculated.

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Nevertheless, despite this welcome trend, you should remain diligent in ensuring that your wage statements make sense and are comprehensible by rank-and-file employees. You should also audit your wage statements to ensure compliance with section 226. Additionally, we recommend you seek guidance from counsel to ensure wage statements not only meet the technical standard laid out in the Labor Code, but also include all essential information needed for employees to verify they are properly paid in the most transparent way possible.

As new developments occur in California, we will continue to assess and provide necessary updates. Please ensure you are [subscribed to Fisher Phillips' Insight system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or the authors of this Insight.

Related People



John K. Skousen
Senior Counsel
214.220.8305
Email



Kathryn Evans

Associate
858.666.3311
Email



Danielle H. Moore
Executive Partner, Management Committee
858.597.9600
Email

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