



# Appellate Court Invalidates Auto Dealership's Method Of Paying Service Technicians

Insights

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In an unpublished decision, the California 2nd District Court of Appeal held that that piece-rate-paid employees are entitled to separate hourly pay for “waiting” time. The case involved a class of 108 automobile service technicians who worked for Downtown LA Motors, LP (DTLA), a Mercedes-Benz dealership. *Gonzalez v. downtown LA Motors, LP*.

## Service Techs Paid By Flag Hours

Like most car dealerships and automotive repair shops, DTLA compensates its service technicians on a piece-rate basis, which means that technicians are paid a set amount for each repair satisfactorily completed based on a formula for each job performed. Each job is given a “flat rate” which is determined by the industry depending on how many “flag hours” the completed job is worth. Upon completion of a repair, a DTLA technician accrues a specified number of flag hours regardless of how long it actually takes to complete the job. DTLA paid technicians a flat rate ranging from \$17 to \$32 for each “flag hour.” DTLA technicians accrue flag hours only when working on a repair order.

DTLA calculated technician pay for an 80-hour period by multiplying flag hours accrued by the technician’s applicable flat rate. For example, a technician with a flat rate of \$30 who “flagged” 100 hours in a pay period would earn \$3,000 (\$30 x 100 hours).

Each DTLA technician kept track of all the clock time spent at the jobsite by clocking in and out at the beginning and end of the shift, and clocking out for meal breaks. At the end of each pay period, DTLA calculated how much each technician would earn if paid an amount equal to the total hours “on the clock” multiplied by the applicable minimum wage, plus overtime (if applicable). If a technician’s piece rate compensation fell short of the applicable minimum wage for all hours worked, DTLA would pay the difference.

## Basis Of The Lawsuit

The DTLA technicians contended that there frequently was not enough work to do and they had to remain at the dealership when this happened. They did not flag any hours when waiting for repair jobs, but were expected to perform various non-repair tasks, such as obtaining parts, cleaning their work stations, attending meetings, traveling to other locations to pick up and return cars, reviewing service bulletins, and participating in online training.

DTLA technicians filed a class action lawsuit claiming that DTLA violated California law by not paying technicians a minimum wage during the waiting time (or time spent on the clock engaged in non-piece work). The trial court ruled in favor of the technicians, holding that California law requires DTLA to pay the technicians for their waiting time between repair orders.

### **The Court's Ruling**

On appeal, the court noted that subdivision 4(B) of Wage Order 4-2001 provides: "Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for *all hours worked* in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." "Hours worked" is defined in the wage order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

California case law generally holds that wages paid above the applicable minimum wage are governed by the contract of the parties. DTLA argued that its method of paying technicians complied with the plain language of the wage order because under the pay agreement technicians are paid "not less than" the applicable minimum wage for "all hours worked," and that compliance was achieved by paying the difference if a technician's piece compensation for all hours on the clock fell below the applicable minimum wage.

On that issue, the appellate court agreed: "Under DTLA's flag hour system, technicians earn significantly more by working on cars than waiting for vehicles to repair. They will still have the financial incentive to accrue flag hours in order to increase their earnings." The plaintiffs nonetheless argued that public policy does not permit piece-rate wages to be averaged across the waiting time in satisfying the minimum wage because the term "all hours worked" really means "each and every hour" worked only on piece-rate work, and that technicians should have been paid separately, at the applicable minimum wage, for "each and every" hour of time on the non-piece rate work or time spent waiting for repair work.

But in the end, the appellate court agreed with the employees, and held that the class members "were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer during their work shifts." While acknowledging that technicians benefited significantly from the flat-rate agreement for compensation, the court's decision declined to give full sway to that agreement by limiting the kind of work the flat rate dollars were deemed to cover.

### **The Significance To Employers**

Although the court declined to address the issue of whether time spent by technicians on rest breaks should have been compensated separately, or whether its ruling should extend to commissions or other incentive-based compensation systems, the analytical gaps created by this ruling create uncertainties for employers until the law is clarified. As long as the decision remains

unpublished, it will not be binding on future trial court decisions on this issue. It remains to be seen, however, whether DTLA will appeal this decision to the California Supreme Court

In the meantime, dealerships and other employers employing technicians compensated on a piece-rate system should consider mitigating the risks posed by this decision, such as modifying technician compensation to avoid so-called unpaid “waiting time.” One way to do so is by paying separate hourly compensation for non-piece rate work.

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