Insights, News & Events

CALIFORNIA STATE SUPREME COURT DENIES REVIEW OF PIECE-RATE CASE: LOWER COURT RULING TO STAND

Insights
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The California Supreme Court denied review of a California Court of Appeal case, which held that piece-rate-paid employees are entitled to separate hourly pay for "waiting" time. *Gonzalez v. Downtown LA Motors.*

Due to the Supreme Court's action, the Court of Appeal decision is now binding precedent. In its decision, the appellate court noted that California law 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 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."

Downtown LA Motors (DTLA) had argued that its method of paying technicians complied with the plain language of the wage order because under the pay agreement technicians were 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. The court noted: "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." DTLA technicians accrue flag hours only when working on a repair order.

But the technicians 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.

In the end, the appellate court held the general rule that "employers must pay for all hours worked and may not average paid, productive hours with non-paid, non-productive hours" applies to piece-rate employees. Therefore, the class of technicians was "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."

Last year, a federal trial court reached a similar result regarding a salesperson commission plan in the *Balasanyan v. Nordstrom case*. Nordstrom commission-paid salespersons were required to engage in stocking, pre-opening, and post-closing activities. The court held that those hours were uncompensated because "compensation must be directly tied to the activity being done, whether it is selling on commission or preparing to sell on commission," and that "activities only indirectly related to sales or services must also be compensated."

As a consequence of these decision, all California employers who pay employees on a piece rate or commission basis, including flat-rate technicians and salespersons, should immediately review their pay plans to mitigate the risks posed by the *Gonzalez v. Downtown LA Motors* and *Balasanyan* decisions. At a minimum, we recommend:

- Modifying piece rate and commission compensation to avoid so-called "uncompensated" hours, but paying at least minimum wage directly for each hour worked (including non-piece rate work and work indirectly related to sales);

- Reviewing itemized pay statements to ensure compliance with Labor Code section 226, which requires pay statements to show information, including total hours worked by employees, the number of piece rate units earned and any applicable piece rate, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked;

- Implementing arbitration agreements to control exposure to class-action lawsuits; and

- Consulting qualified labor and employment counsel to determine whether piece rate and commission pay plans require modification, and whether any other action

is appropriate to mitigate risk based on the *Gonzalez* and *Balasanyan cases*.

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