



Washington Employers Must Pay Piece Rate Workers Additional Rest Break Compensation

Insights

7.23.15

With some limited exceptions, Washington State wage and hour rules require that workers receive a paid 10 minute rest break for every four hours worked. The Washington Supreme Court has now expanded employer obligations in this regard by ruling that employers must pay piece rate workers additional compensation for the required rest periods. The July 16, 2015 decision in *Demetrio v. Sakuma Brothers Farms, Inc.* states that the rest break time cannot be folded into the piece rate, and instead must be paid separately. While this case arose in the agricultural-worker context, its key holding likely applies to all industries that use piece rate compensation plans – plans under which an employee’s pay is based on the number of “pieces” he or she generates or completes.

The Supreme Court’s Decision

This case arose out of a class action brought by seasonal berry pickers who alleged that their employer failed to pay them for all hours worked, report their hours worked, or provide required rest breaks. The majority of their claims were settled under an agreement approved by the U.S. District Court for the Western District of Washington. Left undecided, however, was whether employers had an obligation to separately pay piece rate workers for required rest breaks, and if so, how the rate of pay should be calculated.

In deciding that the answer to the first question was yes, the Supreme Court focused on the language in the rest period rule which states that “every employee shall be allowed a rest period of at least ten minutes, on the employer’s time, in each four-hour period of employment.” The Court decided that the only reasonable interpretation of “on the employer’s time” for piece rate workers requires “pay separate from the piece rate.” The Court also emphasized its long history of interpreting wage and hour regulations “in a way that protect[s] workers’ rights,” and that any interpretation of the rest break rule which discouraged employees from taking their required breaks would defeat the purpose of the law.

Calculating Pay

In explaining how the rate of pay for rest break time should be calculated, the Court looked to cases interpreting Washington’s Minimum Wage Act and the state’s overtime laws. The Court expressly rejected the employer’s argument that the law only required payment of minimum wage for rest period time, instead holding that the regulation entitled pieceworkers to their “regular rate of pay.”

In other words, employers should “tally the total piece rate earnings and divide those earnings by the hours the pieceworker worked,” excluding the time spent resting. The Court added, however, that if the “regular rate” is less than minimum wage, the minimum wage rate should instead be used to compensate for rest period time.

What This Means For Employers

The Court’s ruling applies immediately to all those employees in Washington who are paid on a piece rate basis. While *Demetrio* interpreted the agricultural rest period rule, its same key “on the employer’s time” language also appears in the nonagricultural-workers rule. Employers across all industries using a piece rate compensation plan (manufacturing, automotive, etc.) should follow this decision and thus immediately:

1. **Schedule employees’ rest periods and ensure that employees take them.** Washington court cases make clear that it is the employer’s, not the employees’, obligation to make sure workers get their required breaks. Nonagricultural employees choosing to follow the alternate mini-break compliance method, rather than scheduling breaks in a single block of time, would be wise to reexamine this practice in light of this ruling.
2. **Pay piece rate employees’ rest periods separately.** The decision specifically states that rest periods must be paid “separate and apart” from the piece rate. This means that employers need to include 10 more minutes of pay for each required rest period.
3. **Pay the rest periods at the correct rate of pay.** This will require calculating the employees’ “regular rate of pay” each work week to determine the correct rate. The correct rate for rest periods will likely vary each workweek, as employees’ compensation on a weekly basis must be analyzed to determine the amount of rest break pay. Employers must also make sure that this rate is equal to or more than Washington’s minimum wage, currently \$9.47/hour. If the regular rate is lower, employers must pay the minimum wage rate for the rest breaks.

The Court’s opinion left undecided whether its decision applies retroactively to past pay periods. This issue will likely be litigated in the future, and employers should be mindful of potential of litigation. The applicable statute of limitations for unpaid rest breaks is three years. Potential recovery for workers includes the pay owed, doubled, as well as attorneys’ fees.

If you have any questions about this case, or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our Seattle office at 206.682.2308.

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