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"That Can't Be Right!" California Appellate Court Rules that Piece Rate Workers Are Entitled to Separate Hourly Compensation

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A California Court of Appeal dealt another blow to employers this month when it held automobile mechanics, who earned at least minimum wage for every hour worked, were entitled to separate hourly compensation for any time not spent performing auto repairs. *See Oscar Gonzales v. Downtown LA Motors*, LP, 2013 Cal. App. Unpub. LEXIS 1728 (March 6, 2013). The attorneys for Downtown LA Motors (DTLA) argued it "can't be right" to find that employers who guarantee their employees the minimum wage for every hour worked somehow failed to satisfy their minimum wage obligation. The appellate court disagreed, awarding the class in excess of $1.5M.

Background

Gonzalez claimed that DTLA's piece rate plan paid auto mechanics only for time they were actually making repairs, and not for any other time, such as time waiting for customers to arrive, 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's mechanics were compensated based on a piece rate known as "flag hours," which pays a set number of hours for a particular repair, regardless of the actual time the mechanic takes to complete the repair. For example, a brake repair might have a "flag hour" allotment of 2 hours, and the mechanic performing the break repair would thus receive 2 hours' pay, even if the repair took more or less than 2 hours to complete. Further, DTLA guaranteed the mechanics the minimum wage for *every hour worked* (not just time spent making repairs).

Citing *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314 (2005), the *Gonzalez* trial court found DTLA's compensation plan constituted illegal "pay averaging," and that DTLA was required to pay a separate hourly rate for any time the mechanics were not actively engaged in repairs. DTLA appealed.

Deciding Whether *Armenta* Applies to Piece-Rate Compensation

The primary issue for the appellate court in *Gonzalez* was whether its previous decision in *Armenta* applied to piece-rate compensation. *Armenta* concerned *hourly* employees who worked pursuant to a collective bargaining agreement where the employer paid only for "productive" hours, and did not pay for "nonproductive" work, such as travel from the office to a work site. The employees in *Armenta* sued for alleged failure to pay minimum wage. The employer argued that it satisfied

California's minimum wage requirement because, dividing the employees' compensation by the total number of hours worked (both productive and nonproductive), the employees still "averaged" more than minimum wage for all hours worked. Citing to California Labor Code sections 221, 222 and 223 (none of which concern minimum wages), the *Armenta* court held that the employer could not satisfy minimum wage obligations by "averaging," but instead was required to pay minimum wage "for each hour worked."

DTLA argued that *Armenta* should not apply because its holding was specific to *hourly* employees who, the trial court found, were not paid minimum wage for all *hours* worked. The *Gonzalez* court disagreed, holding that *Armenta* did apply to piece-rate compensation. The appellate court first noted that the relevant wage order provides that an employer shall pay "not less than the applicable minimum wage for all hours worked in the payroll period," regardless of whether the "remuneration is measured by time, piece, commission, or otherwise." The *Gonzalez* court next referenced federal district court decisions that have rejected the argument that *Armenta* should be limited only to hourly employees, citing to *Cardenas v. McLane Foodservices, Inc.*, 796 F. Supp. 2d 1246 (C.D. Cal. 2011) and *Carillo v. Schneider Logistics, Inc.*, 823 F. Supp. 2d 1040 (C.D. Cal. 2011) (both cases holding that truck drivers who were paid on a piece-rate basis must be paid for all hours worked). The appellate court also found the application of *Armenta* to be consistent with the position and enforcement policies of the Division of Labor Standards Enforcement (DLSE).

The *Gonzalez* court thus held that, based on *Armenta*, DTLA's piece-rate compensation failed to comply with California's minimum wage statute because DTLA failed to compensate its mechanics for the time they spent waiting between repairs. The appellate court also clarified that its holding was limited to the facts before it, and that it was not making any ruling regarding how the same pay structure would apply in a commission setting.

The *Gonzalez* Court Misapplies California Minimum Wage Law

The flaw in the *Gonzalez* logic is that it disregards settled California minimum wage law, which requires only that employers pay employees at least minimum wage for every hour worked, regardless of the tasks performed. Indeed, Labor Code section 200 defines "wages" as "all amounts for labor performed by employees," regardless of whether paid by the hour or the piece, without any qualification that a piece-rate wage may be paid only when an employee is actively working on the "piece."

The only authority supporting a claim that piece-rate compensation may be paid only for time spent actively making "pieces" is section 47.7.1 of the Division of Labor Standards Enforcement Policy and Interpretations Manual. As a preliminary matter, the California Supreme Court has held that the DLSE Manual is not entitled to deference because it is an underground regulation. *See Tidewater Marine Western, Inc. v. Bradshaw*,14 Cal.4th 557, 576-77 (1996). However, even if the DLSE Manual is considered, the DLSE has repeatedly opined that a compensation plan that includes a guaranteed rate of compensation per hour that equals or exceeds minimum wage is lawful. *See, e.g.*, section 34.2 of the DLSE Manual (a draw against commissions must be equal at least to minimum wage "for each pay period"); DLSE Op. Ltr. 1987.03.03 ("must be paid at least minimum wage for each period of employment").

Here, DTLA's piece-rate plan guaranteed that employees would earn at least minimum wage for *every hour worked* regardless of whether they made any pieces at all. This type of pay plan is lawful, and the appellate court's conclusions are erroneous, for several reasons. First, the pay structure is distinguishable from *Armenta* because DTLA *guarantees* its employees the minimum wage for *every* hour worked, leaving no work time uncompensated. Second, the hourly guarantee falls squarely within the parameters of section 34.2 of the DLSE Manual. Third, the guarantee ensures minimum employee compensation, while the piece-rate component of the pay plan allows and incentivizes employees to increase their compensation based on productivity. Fourth, the provision of the DLSE Manual that spawned this line of cases is factually inapplicable. It states that an employer may not pay piece rate during periods of time when the employer "precludes" an employee from earning a piece rate. DTLA did not preclude its mechanics from earning their piece rate during periods of down time. Customers simply were not present or in need of repairs. And in any event, DTLA accounted for such down time by guaranteeing that it would pay its employees minimum wage for every hour worked, regardless of whether the employees were "making pieces."

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