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California employers must pay meal and rest period premiums at the employee's regular rate of pay

On July 15, the California Supreme Court held that employers must calculate the premium pay due for failing to provide meal and rest periods based on the employee's regular rate of pay. The decision will apply retroactively, leaving employers potentially liable for additional payments and penalties even if they previously paid premiums at the employee's base hourly rate.

Background

California law requires employers to provide certain meal and rest breaks. California Labor Code Section 226.7 (Section 226.7) requires employers that fail to provide a compliant meal or rest period to pay nonexempt employees one additional hour of pay at their "regular rate of compensation" for each work day that the meal period or rest period is not provided.

California law also requires employers to provide overtime pay when employees work more than a certain period of time. California Labor Code Section 510 (Section 510) generally requires employers to compensate nonexempt employees at the rate of no less than one and one-half times their "regular rate of pay" for work in excess of eight hours in one workday or 40 hours in a workweek and double their "regular rate of pay" for time worked in excess of 12 hours in one day or beyond eight hours on the seventh day of the workweek.

Buck comment. Because the regular rate of pay used to calculate an employee's overtime rate includes their hourly base plus adjustments from additional forms of compensation (such as shift differentials, piece-rate, nondiscretionary incentive/production bonuses, and commissions), it may change from pay period to pay period.

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Premium pay rate challenged

In 2015, Jessica Ferra brought a class action against her employer, alleging that it violated California law by failing to include nondiscretionary payments (like her quarterly incentive payment) in addition to her hourly rate when calculating meal and rest break premium pay owed under Section 226.7. She argued that employers must calculate premium pay for missed meal and rest breaks in the same way that they calculate overtime pay.

Concluding that the terms “regular rate of compensation” used to calculate premium pay for break violations and “regular rate of pay” used to calculate overtime pay are not interchangeable, the court dismissed the suit. The Court of Appeal affirmed, holding that the employee’s base hourly wage — not the more complex “regular rate of pay” used to calculate overtime pay — determines the premium employers must pay for missed meal and rest periods. Plaintiff appealed, asking the California Supreme Court to clarify what Section 226.7’s “regular rate of compensation” means “in a context where an employee receives a number of forms of wages for work she performs.”

California Supreme Court weighs in

On July 15, the California Supreme Court issued a unanimous decision in *Ferra v. Loews Hollywood Hotel, LLC*. Reversing the Court of Appeal, it held that the “regular rate of compensation” for calculating meal and rest break penalties under Section 226.7 has the same meaning as the “regular rate of pay” for calculating overtime pay under Section 510 and “encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee.” Thus, nonexempt employees’ meal and rest break premiums must be paid at the same rate of pay used to calculate overtime pay — not at the employee’s base hourly rate.

The court noted that judicial decisions interpreting statutes generally apply retroactively. Stating that it was interpreting a statute, rather than overruling or disapproving settled law, the court held that its decision applies retroactively.

In closing

The California Supreme Court has now resolved the ambiguity regarding how meal and rest period premiums are to be calculated under the Labor Code. Employers should immediately adjust their pay practices to ensure that they factor in nondiscretionary bonuses, commissions, and other forms of nondiscretionary pay when calculating employees’ meal and rest period premiums.

COVID-19 Compliance check-in

Buck’s latest version of the **COVID-19 Compliance check-in** is updated to reflect the retirement, health, labor and employment issues facing employers now. Review the checklist to help your team manage priorities and determine next steps.

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