



COMPLIANCE IS KEY

2018 Mid-Year Employment Update

Presented By: Treaver Hodson

DYNAMEX OPERATIONS WEST

V.

SUPERIOR COURT



Establishes test for Independent contractor status, that makes it more difficult to qualify as independent contractor.

JANUS

V.

***AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES,
COUNCIL 31***

**Requiring public employees to pay
agency fees or other union dues
VIOLATES the First Amendment.**



Alvarado ***v.*** ***Dart Container Corp. of CA***

Employee's flat sum bonus was properly treated, when calculating employee's "regular rate of pay" for overtime purposes, by dividing the amount of the bonus by the total number of non-overtime hours worked during the pay period.



CALCULATING OVERTIME PAY

FACTS:

A full-time employee, working 8:00 a.m. to 5:00 p.m. Monday through Friday, is paid \$17.00 an hour normal hourly wage rate. In addition, for any Saturday or Sunday on which the employee works an hours, she receives a flat rate bonus of \$60.00 for that day.

QUESTION?

If in a given bi-weekly pay period, the employee worked 80 regular hours, and five overtime hours on a Saturday, what is the overtime rate for those five hours?

WRONG WAY

- ▶ **Step One:** Multiply overtime hours by normal hourly wage rate to get base overtime pay. $\$17 \times 5 \text{ hours} = \85 .
- ▶ **Step Two:** Add the total hourly pay for non-overtime work, the non-hourly compensation (e.g. the bonus), and the base pay for the overtime. $(\$17 \times 80 \text{ hours} = \$1,360 \text{ non-overtime}) + \$40 \text{ bonus} + \$85 \text{ base overtime pay} = \$1,485$. Then divide this amount by the total hours worked, including overtime, to get the regular rate of pay for purposes of calculating overtime rate. $\$1,485 / 85 \text{ total hours} = \17.47 .
- ▶ **Step Three:** Multiple regular pay rate by overtime hours and then divide in half to get the overtime premium. $(\$17.47 \times 5 \text{ hours} = \$87.35) / 2 = \$43.68$.
- ▶ **Step Four:** Add the base hourly pay for overtime work to the overtime premium to get total overtime compensation. $\$85 \text{ based overtime pay} + \$43.68 \text{ overtime premium} = \$128.68 \text{ overtime pay}$.

RIGHT WAY

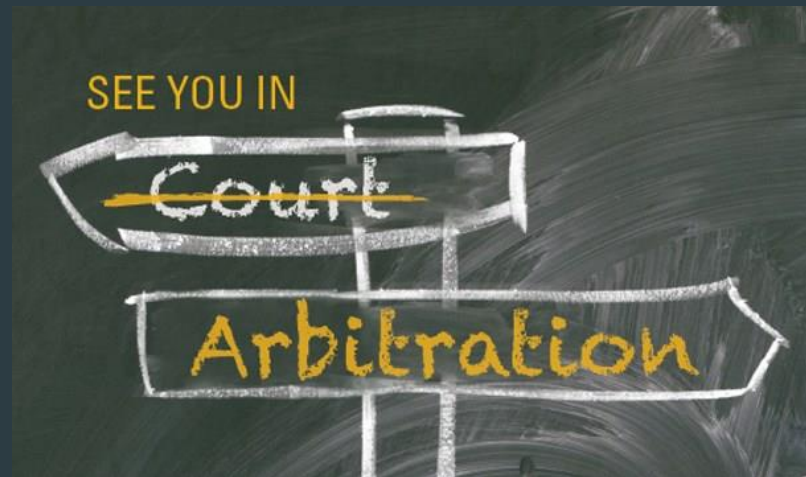
- ▶ **Step One: Multiply employee's normal hourly wage rate by 1.5 to get overtime rate. ($\$17 \times 1.5 = \25.50 overtime rate) $\times 5$ hours = $\$127.50$ overtime.**
- ▶ **Step Two: Calculate bonus' per-hour value based on number of non-overtime hours worked and then multiply it by 1.5, and then multiply that number by the number of overtime hours worked. ($(\$40 / 80 \text{ hours} = \$.50) \times 1.5 = \$.75$) $\times 5$ hours = $\$3.75$**
- ▶ **Step Three: Combine for total overtime compensation. $\$127.50 + \$3.75 = \$131.25$.**
- ▶ **The correct formula results in a slightly higher overtime pay for the employee.**

EPIC SYSTEMS CORP.

V.

LEWIS

Employers can require that employees waive rights to class or collective class actions and require that they arbitrate their claims on an individual basis.



NOTE: This case did not address representative actions under PAGA.

TROESTER

V.

STARBUCKS CORPORATION

The FLSA *de minimis* exception is not recognized under California law.



SIGNIFICANCE: CALIFORNIA EMPLOYERS MUST COMPENSATE EMPLOYEES FOR ROUTINELY WORKING OFF THE CLOCK, EVEN FOR SMALL AMOUNTS OF TIME.

***DE MINIMUS* EXCEPTION**

FACTS:

Technician who installed and repaired vehicle recovery systems was paid for time from arrival at first job location to completion of final installation of the day, but not for approximately two minutes of time spent every morning doing paperwork. Employee files suit seeking compensation for these preliminary activities performed before paid time begins.

REMEMBER...

There is no *de minimus* exception under California Law.

HUFF
V.
SECURITAS SECURITY SERVICES
USA, INC.

Employees may bring suits under PAGA for Labor Code violations not personally affecting the employees bringing suit.

SIGNIFICANCE: EMPLOYERS MAY SEE LARGER CLAIMS IN PAGA SUITS.



ENCINO MOTORCARS, LLC

v.

NAVARRO

“Service advisors” at car dealerships are exempt employees, rejecting the narrow interpretation principle for FLSA exemptions.



=

EXEMPT

SIGNIFICANCE: IT COULD BE MORE DIFFICULT FOR EMPLOYEES TO SUCCESSFULLY ARGUE THAT THEY ARE NON-EXEMPT.



CONNOR V. FIRST STUDENT, INC.

Employers must comply with both the CCRAA and ICRAA for background checks looking into employee credit worthiness and character.

SIGNIFICANCE: EMPLOYERS ARE NOW MORE LIKELY TO BE REQUIRED TO OBTAIN WRITTEN AUTHORIZATION FOR BACKGROUND CHECKS.

REGULATIONS ON NATIONAL ORIGIN EFFECTIVE JULY 2018

“National Origin,” for the purposes of discrimination law, now includes:

- ✓ **Physical, cultural, or linguistic characteristics associated with a national origin group**
- ✓ **Tribal affiliation**
- ✓ **Attendance or participation in schools, churches, temples, mosques, or other religious institutions**



REGULATIONS ON ENGLISH-ONLY POLICIES

New regulations also prohibit employers from adopting an English language only policy unless:

- **(A) The language restriction is justified by business necessity;**
- **(B) The language restriction is narrowly tailored; and**
- **(C) The employer has notified its employees of the circumstances in which the language restriction is observed and the consequence for violations.**

AB 2282

SALARY HISTORY

Background: AB 168 prohibits employers from asking applicants about salary.

The New Law: AB 2282 provides that:

- ▶ **Salary history ban only applies to external applicants.**
- ▶ **Applicants can voluntarily disclose salary history and if so employers can rely on that information.**



TIP POOLING



A change in federal via the Consolidated Appropriations Act, 2018 permits tip pooling with back-of-the-house employees who are not directly engaging with customers.



NLRB GENERAL COUNSEL EMPLOYEE HANDBOOK GUIDANCE

SIGNIFICANCE:

WORKPLACE RULES ARE NOW LESS LIKELY TO BE FOUND IN VIOLATION OF THE NLRA.



EXAMPLE:

WORKPLACE RULES ARE NO LONGER UNLAWFUL BECAUSE THEY *COULD*, RATHER THAN *WOULD*, COVER PROTECTED ACTIVITIES.

CATEGORY 1 RULES

Rules that:

- ▶ **Do not prohibit or interfere with NLRA rights; or**
- ▶ **For which any burden on NLRA rights is outweighed by business justifications**

ARE GENERALLY LAWFUL.



CATEGORY 2 RULES

Rules requiring case-by-case determination:

- ▶ **Any determination requires analysis of whether the rule would interfere with NLRA rights.**
- ▶ **If so - is that interference outweighed by legitimate justifications?**

SIGNIFICANCE: EMPLOYERS MAY NOT ADOPT RULES LIMITING NLRA RIGHTS.



CATGEGORY 3 RULES

For rules that prohibit or limit NLRA rights, the adverse impact on those rights outweighs any justification. The NLRB typically issues complaints over these rules.



THESE RULES ARE CONSIDERED TO VIOLATE THE NLRA:

- **Confidentiality rules specifically regarding wages, benefits, or working conditions; and**
- **Rules against joining outside organizations or voting on matters concerning the employer.**

SB 1300

FEHA AMENDMENTS



- ▶ **Unlawful to require employee release FEHA claim in exchange for a bonus, raise, or continued employment;**
- ▶ **Employers are liable for ANY harassment by non-employees where the employer knew and failed to take action;**
- ▶ **More difficult for employers to prevail on harassment claims.**

SB 820

SETTLEMENT OF SEXUAL HARASSMENT CLAIMS

- ▶ **Prohibits provisions in settlement agreements preventing disclosure of information pertaining to claims.**
- ▶ **Does not prohibit provision preventing parties from disclosing the amount of the settlement.**
- ▶ **Settlement may include provision limiting disclosure of the claimant's identity.**



ADDITIONAL BILLS RELATED TO SEXUAL HARASSMENT

- ✓ AB 3109 Disclosure of Sexual Harassment
- ✓ SB 224 Sexual Harassment
- ✓ SB 1343 Sexual Harassment Training
- ✓ AB 1619 Sexual Assault Statute of Limitations

SB 826 GENDER COMPOSITION OF BOARD OF DIRECTORS

- ✓ **Mandatory inclusion of women on corporate boards of directors.**

THEN



NOW



ADDITIONAL BILLS TO FAMILIARIZE YOURSELF WITH...

- ✓ **AB 1654 PAGA Relief for Unionized Construction Employer**
- ✓ **AB 2605 On-call rest breaks/Petroleum Industry**
- ✓ **AB 2034 Human Trafficking**
- ✓ **SB 970 Human Trafficking**
- ✓ **SB 1976 Lactation Accommodation**
- ✓ **SB 1123 Paid Family Leave Uses**
- ✓ **SB 1252 Copy of Payroll Records**
- ✓ **SB 1412 Criminal History Inquiries**

