

California Supreme Court Sides with the DLSE and Employee on Overtime Calculation for Flat Sum Bonus

MARCH 8, 2018

On March 5, 2018, the California Supreme Court issued a decision deciding how employers should calculate the overtime rate for a non-exempt employee who has earned a flat sum bonus.

The court adopted the Division of Labor Standards Enforcement's (DLSE) longstanding method of calculating the regular rate of pay on the bonus: divide the bonus by the regular (non-overtime) hours worked in the bonus period. This number is then used to determine the time and a half overtime rate and the double time overtime rate for the bonus. The court also held that the decision is applied retroactively.

Facts

Hector Alvarado worked at Dart Container Corporation of California from September 2010 to January 2012. In addition to an hourly wage, Alvarado was paid an attendance bonus consisting of a \$15 flat sum per day of weekend work. The \$15 flat sum bonus was paid regardless of the number of hours Alvarado worked beyond the normal scheduled length of a shift. In other words, whether Alvarado worked overtime or not, he received the bonus for completing a Saturday or Sunday shift. Dart calculated the overtime owed on the flat sum bonus in accordance with the method articulated by the federal Wage & Hour Division in 29 C.F.R. § 778.110:

1. Multiply the number of overtime hours in the pay period by the employee's normal hourly wage rate (i.e., the employee's straight hourly pay). This number constitutes the employee's base hourly pay for overtime work.
2. Add together the following: (a) total hourly pay for non-overtime work, (b) non-hourly pay, including attendance bonuses, and (c) base hourly pay for overtime work (from step one). This sum is then divided by the total number of hours the employee worked in the pay period, which results in the employee's regular rate of pay for the pay period.
3. The regular rate of pay (from step two) is then multiplied by the amount of overtime hours in the pay period. That number is then divided in half, resulting in the "overtime premium."
4. The results of step one and step three are added together to obtain the total overtime compensation for the pay period.

In August 2012, Alvarado filed suit, claiming that Dart's method of calculation ran afoul of the law and instead, should have followed the California Division of Labor Standards Enforcement's method of calculation. This method, laid out in its enforcement manual, is as follows:

1. Multiply the employee's straight time rate by 1.5 and by the number of overtime hours to determine the overtime compensation attributable only to the employee's hourly wages.
2. Divide the bonus amount by non-overtime hours worked, then multiply that number by 1.5 and by the number of overtime hours worked. The resulting number represents the overtime compensation attributable only to the employee's bonus.
3. Finally, combine the resulting overtime amounts in steps one and two to obtain the total overtime compensation for the pay period.

The key difference between the two formulas is that the DLSE formula divides by only the non-overtime hours worked, while the federal formula divides by all hours worked, including the employee's overtime hours. As a result, the DLSE formula is more employee-friendly because it results in a higher overtime rate.

Dart argued that its calculation method under the federal regulations was lawful given that no California law establishes the correct formula to use in this instance. Both the trial court and the Court of Appeal agreed. The Court of Appeal noted that the DLSE Manual is not binding legal authority, and no California law required any particular calculation method here.

Supreme Court Reverse Lower Courts' Decisions, Adopts the DLSE Formula

In a far-reaching decision, the California Supreme Court held that California employers must use the DLSE Manual's formula when calculating the overtime rate for an employee receiving a flat sum bonus.

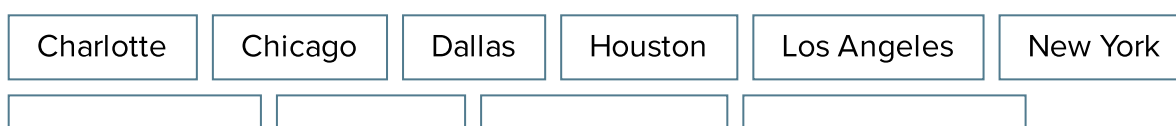
In adopting the DLSE's formula, the court was guided by two principles: (1) California's state policy of favoring an eight-hour workday and 40-hour workweek, and discouraging work beyond those hours; and (2) state labor law must be liberally interpreted to protect workers. Consistent with furthering these principles, the court concluded that the flat sum bonus should be factored into the regular rate of pay by dividing the bonus amount by the total number of non-overtime hours worked during the pay period. It also announced that 1.5, not 0.5, should be used as the multiplier for determining the overtime rate. Finally, the Court stated that the ruling would apply retroactively.

Next Steps for Employers

Because the decision applies retroactively, it's possible an employer who had been using the federal formula would be subject to substantial penalties and liability based on those past practices. This is especially true for employers who operate in multiple states and have centralized payroll operations that may be following the federal guidelines with regard to calculating overtime pay earned on flat sum bonuses. Thus, it is important that employers immediately examine their overtime policies and pay practices related to flat sum bonuses earned by non-exempt employees to ensure they follow the formula adopted by the court.

4 Min Read

Related Locations



San Francisco

Shanghai

Silicon Valley

Washington, DC

Related Topics

California Labor and Employment

California Supreme Court

Overtime

DLSE

Related Capabilities

Labor & Employment

Related Regions

North America

Related Professionals



Derek G. Barella



Shane Blackstone



Joan Fife



Aviva Grumet-Morris



Deborah S.K. Jagoda



Scott Landau



William G. Miossi



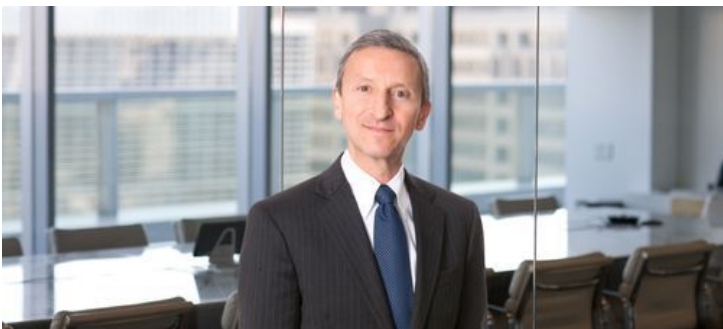
Laura Petroff



Michael Roche



Rex Sessions



Stephen Sheinfeld



Cardelle Spangler



William Sunkel



Emilie Woodhead