



RECENT CALIFORNIA DECISION REGARDING SALARY ARRANGEMENTS FOR NON-EXEMPT EMPLOYEES HAS LIMITED APPLICATION FOR MOST EMPLOYERS

In general, under California law if a non-exempt employee is paid a salary, the employee is still entitled to additional, overtime premium pay for all hours worked over 8 in a day or 40 hours in a week. Previously, several cases held that the only exception to this general rule is if the employee enters into an explicit mutual wage agreement prior to performing the work. The legislature later modified Labor Code Section 515 to state: “For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee’s regular hourly rate shall be 1/40th of the employee’s weekly salary.” According to a California Labor Commissioner publication, this modification to the Labor Code eliminated the “explicit mutual wage agreement” exception to the general rule.

Recently, a California Court of Appeal disagreed with this position taken by the Labor Commissioner. In *Arechiga v. Dolores Press*, the plaintiff worked as a janitor for Dolores Press. The parties agreed that plaintiff would work 11 hours a day for six days a week (66 hours weekly) and signed a written agreement providing that plaintiff would be paid “a salary/wage [with salary circled] of \$880.00” per week. After plaintiff was terminated, he sued the company, alleging that his salary of \$880 compensated him only for a 40-hour workweek and that he was entitled to unpaid overtime of 26 hours per week at the overtime premium rate.

The company argued that under California’s “explicit mutual wage agreement” doctrine, the parties may agree to a guaranteed fixed salary that covers both base salary and overtime for all hours worked. To be valid, the agreement must be entered into before work is performed and specify: (1) the days that the employee would work each week; (2) the number of hours of work each day; (3) that the employee would be paid a guaranteed salary of a specific amount; (4) that the employee was told the basic hourly rate on which the salary is based; and (5) that the employee was told his salary covered both regular and overtime hours.

Relying on the Labor Commissioner’s position, plaintiff argued that mutual wage agreements have been explicitly rejected as unlawful by the California Labor Commissioner and outlawed under Labor Code Section 515. However, the court rejected plaintiff’s claim and upheld the legality of explicit mutual wage agreements.

While the company prevailed in this case, employers should remain mindful that salary arrangements for non-exempt employees pursuant to an explicit wage agreement will only be applicable under a very narrow set of circumstances and must strictly comply with the requirements for a valid wage agreement. If a non-exempt employee works more hours than as set forth in the wage agreement, the employer would still need to provide employees with overtime premium pay in addition to the salary. Accordingly, California employers should exercise caution and consult with employment counsel before making any changes in reliance on this court opinion or adopting such a salary

arrangement. Further, it remains to be seen whether this case will be further appealed, and if so, how the California Supreme Court would rule on this issue.



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