March 12, 2018

California Supreme Court Rules on Non-Exempt Employee Bonuses

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California non-exempt employees may have a new "regular rate of pay" following a recent California Supreme Court decision. A non-exempt employee's "regular rate of pay" is important because it is the basis for determining the non-exempt employee's overtime pay rate, which in most instances is 1.5 times the non-exempt employee's "regular rate of pay." Generally, a non-exempt employee's "regular rate of pay" for a pay period includes the employee's hourly wage and any nondiscretionary flat-sum bonus apportioned over the hours worked in the pay period and paid to the employee. The question before the court in *Alvarado v. Dart Container Corp.*, was how to apportion a nondiscretionary flat-sum bonus over the hours a non-exempt employee works in a pay period.

Under the Fair Labor Standards Act, the federal rule requires a flat-sum bonus to be divided by the total hours a non-exempt employee works in a pay period to determine the portion of the flat-sum bonus that is included in the non-exempt employee's "regular rate of pay." For example, if a non-exempt employee is paid weekly, works 50 hours (10 hours of overtime), and receives a $40 nondiscretionary bonus for the week, her "regular rate of pay" will include $0.80 ($40 divided by 50 hours) from the nondiscretionary flat-sum bonus.

Declining to follow the federal rule, the *Alvarado* court set a new standard in California for apportioning nondiscretionary flat-sum bonuses to a non-exempt employee's "regular rate of pay." Now, flat-sum bonuses earned by a non-exempt employee in California will be divided only by the non-overtime hours worked by the non-exempt employee to determine the portion of the flat-sum bonus to be included in her "regular rate of pay." Following the previous example, if a California non-exempt employee is paid weekly, works 50 hours (10 hours of overtime), and receives a $40 bonus for the week, her "regular rate of pay" will include $1.00 ($40 divided by 40 hours) from the nondiscretionary flat-sum bonus.

Although the *Alvarado* decision will have a direct impact on employers with employees in California, it serves as a reminder to all employers that nondiscretionary bonuses of any kind must be included in the calculation of non-exempt employees' regular rate of pay for overtime compensation purposes.

Our Labor and Employment team provides a more in-depth discussion of the *Alvarado* case here.