

Alvarado v. Dart Container Corporation Clarifies Overtime Calculation When Employees Earn Flat Sum Bonuses

Alvarado v. Dart Container Corporation, Case No. S232607 (Cal. Sup. Ct., March 5, 2018)

On March 5, 2018, the California Supreme Court issued its long awaited overtime calculation decision in *Alvarado v. Dart Container Corporation*, Case No. S232607 (March 5, 2018). The specific question before the Court was "how an employee's overtime pay rate should be calculated when the employee has earned a flat sum bonus during a single pay period."

The *Alvarado* case involved a *class action* brought by a group of employees who received a bonus for working on a weekend. Specifically, these employees were paid an attendance bonus if they were scheduled to work on a Saturday or Sunday, worked and completed the full work shift. The amount of the bonus was a flat \$15 per day.

The parties did not dispute that the bonus must be factored into the employee's regular rate of pay so that the employee's overtime pay rate reflects all the compensation that the employee earned. In deciding how to include that attendance bonus, Plaintiff Alvarado, relying upon a state Division of Labor Standards Enforcement (DLSE) Manual policy, which directly addressed the issue, argued that the employer must determine the regular rate of pay by allocating the bonus *only to non-overtime, regular* hours worked during the pay period.

The lower courts approved of the employer's use of the less employee friendly federal formula for determining the employee's regular rate of pay. In the federal formula, the employer allocates the attendance bonus to *all hours worked*, thus including overtime hours.

The California Supreme Court reversed the appellate court, agreeing with Plaintiff Alvarado and finding that, when allocating a flat sum bonus, an employer must allocate that bonus only to *non-overtime, regular* hours. Beginning its discussion with the premise "California has a longstanding policy of discouraging employers from imposing overtime work," the Court further noted that "[The California Labor Code overtime provisions] are more protective of workers than federal law, which does not require premium pay for workdays in excess of eight hours. Moreover, it

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is well settled that federal law does not preempt state law in this area, and therefore state law is controlling to the extent it is more protective of workers than federal law."

Based upon that premise, the Court held that "for the limited purpose of calculating overtime pay, the attendance bonus (which is earned all at once by completing a weekend work shift) is treated as if it were earned on a per-hour basis throughout the pay period." With respect to whether that pay period includes all hours or only regular hours, the Court had to determine whether the DLSE policy was void based upon prior court decisions. In an interesting twist, the Court ruled that the DLSE policy was void, but stated: "the DLSE's policy is not necessarily wrong just because it is set forth in a void underground regulation. The policy interprets controlling state law, and that interpretation may be correct." The Court found the DLSE's interpretation more in keeping with the state Labor Code than the federal law ("we are obligated to prefer an interpretation that discourages employers from imposing overtime work and that favors the protection of the employee's interests.")

It is now clear: Employers must follow the DLSE's guidance when allocating flat sum bonuses to determine the regular rate of pay for overtime calculation purposes (see DLSE Manual section 49.2.4.2). Specifically, they must determine the regular rate by dividing the bonus by the maximum legal regular hours worked (the non-overtime hours) during the period to which the bonus applies or they will be at risk of a class action suit based upon the *Alvarado* decision.

The DLSE Manual, Section § 49.2.4.3, at page 49-9, provides an example of how to calculate a flat sum bonus. Here is a link to the DLSE Manual: http://www.dir.ca.gov/dlse/dlsemanual/dlse_enfcmanual.pdf.

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