

California Supreme Court Decides How to Pay Overtime on Flat-Sum Bonus

For employers who give their employees flat-sum bonuses, the California Supreme Court recently clarified exactly how to calculate overtime pay for those workers.

In California, overtime pay is based on the employee's "regular rate of pay" — a rate that may not solely consist of an employee's normal hourly wage, as it must include almost all forms of pay the employee receives. But how do you calculate the regular rate of pay when an employee receives both an hourly wage(s) and a flat-sum bonus — such as an extra \$15 for working a weekend shift?

Generally, there are two possible calculations that employers have been able to use;

- dividing the flat-sum bonus only by the "regular" hours worked in a week, which is the method used in the Division of Labor Standards Enforcement (DLSE) Enforcement Manual, or
- dividing the flat-sum bonus by the "total" hours — regular plus overtime — worked during the week, which is the federal formula.

But on March 5 of this year, the California Supreme Court held that employers determining the regular rate on a flat-sum bonus must divide the bonus amount by the employee's number of non-overtime hours worked (i.e. the DLSE method). Using this method instead of the total number of hours worked (including overtime hours) provides the per hour value of the flat-sum bonus to use in calculating the regular rate of pay (*Alvarado v. Dart Container Corp. of California*, 411 P.3d 528 (2018)).

The Supreme Court reasoned that a flat-sum bonus is not tied to the number of hours worked — the \$15 will be paid when an employee picks up a weekend shift, regardless of how many hours the employee worked that week. Because the flat-sum bonus was payable even if the employee didn't work overtime, only the non-overtime hours should be considered when calculating the regular rate of pay.

The Court also based its ruling on two other policy factors:

- California law requires premium overtime pay, which is meant to discourage employers from imposing overtime work; and
- California labor laws are interpreted liberally in favor of worker protection.

Example

An employee earning \$12 per hour worked 50 hours in a workweek (40 hours of straight time and 10 hours of overtime). The employee also received a \$20 flat-sum bonus for working a weekend shift. Using the Supreme Court's method, the employee's wages for the week would be calculated as follows:

- Total non-overtime hours worked: 40
- Flat-sum bonus attributable to the workweek: \$20
- Per hour value of bonus: $\$20 \text{ bonus} \div 40 \text{ regular hours} = \0.50
- Overtime value of the bonus: $\$0.50 \times 1.5 = \$0.75 \times 10 \text{ overtime hours} = \7.50
- Total earnings due for the workweek:
- Straight time: 40 hours at \$12/hour = \$480
- Overtime: 10 hours at \$18.00/hour = \$180
- Bonus: \$20
- Overtime on bonus: \$7.50

Total wages: \$687.50 (\$480 + \$180 + \$20 + \$7.50)

Takeaways

- When paying overtime, remember to include all forms of wages — commissions, bonuses, piece rates, etc. — when calculating the employee's “regular rate of pay.”
- Review your pay practices when hourly employees receive bonuses or other compensation to make sure you are in compliance.
- Use caution when relying on DLSE interpretations, particularly those that lack citations to California codes or regulations.
- Seek legal counsel if you want to give “extra pay” to hourly workers to make sure you’re paying employees properly. Not all bonuses are treated equally.

Source: California Chamber of Commerce article on Alvarado v. Dart Container Corp. of California, 411 P.3d 528 (2018)

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