

TYPES NOT MAPPED YET November 17, 2015 | TTR not mapped yet | John L. Viola

California auto dealers: Re-check your pay plans and wage statements before January 1, 2016

On October 10, 2015, Governor Jerry Brown signed AB 1513 into law creating a new California Labor Code § 226.2 (effective January 1, 2016), which rewrites and redefines the rules governing piece-rate compensation in California.

Section 226.2 codifies the California Courts of Appeal decisions in *Gonzalez v. Downtown LA Motors*, 215 Cal.App.4th 36 (2013) and *Bluford v. Safeway Stores, Inc.*, 216 Cal.App.4th 864 (2013) and answers some important questions left open by these decisions. Although primarily negotiated by agricultural interests, section 226.2 applies to all piece-rate compensation plans, including the auto industry. Therefore, auto dealers paying on a piece-rate basis must:

1. Separately compensate employees for time spent taking rest breaks.

- The compensation for rest and recovery periods must be no lesser than the greater of: (1) the applicable minimum wage OR (2) the average hourly rate for all hours worked (exclusive of break time) during the work week.

2. Separately compensate employees for "other nonproductive time."

- "Other nonproductive time": Time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on the piece-rate basis.
- "Other nonproductive time" must be compensated at a rate not less than the applicable minimum wage.
- An employer may pay "other nonproductive time" based on either: (1) records of the actual time worked by the employee OR (2) the employer's "reasonable estimate" of such "other nonproductive time" work.

3. Provide additional relevant information on required wage statements.

- Wage statements must include:
 1. the hours spent on rest breaks,
 2. the rate paid for such rest breaks,
 3. the gross wages paid for such rest breaks,
 4. hours spent on "other nonproductive time,"
 5. the rate paid for such "other nonproductive time," and
 6. the gross wages paid for such "other nonproductive time."

What does this mean for California Automotive Dealerships?

Now is the best time for California auto dealers to re-check their pay plans, employee manuals and wage statements. Although many auto dealers have adjusted their practices after the *Downtown LA Motors* and *Bluford* decisions, California's new labor code section answers important questions left open by these decisions as discussed in this article.

In addition, the new law does provide an affirmative defense for failure to compensate piece-rate workers for rest and recovery periods - *if the employer satisfies the following requirements by **December 15, 2016***:



1. the employer makes payments to each of its current and former employees in the amount of break and other nonproductive time not properly compensated during the period July 1, 2012 through December 31, 2015;
2. the employer makes a good faith effort to locate and provide these payments to each of its former employees who would qualify; and,
3. the employer provides written notice to the Department of Industrial Relations by July 1, 2016, of its intention to make these payments.

In light of Labor Code § 226.2, all employers paying employees on a piece-rate basis may want to consider paying them the minimum wage for all hours worked and use activity-based bonuses. Effective January 1, 2016, California's minimum wage increases to \$10.00/hour. Importantly, the new legislation does not impact or change overtime rules and requirements to provide meal breaks and rest breaks.

We will continue to monitor California legislation and labor law developments. If you have any questions, please feel free to contact your Thompson Coburn attorney, the authors of this alert, or any member of Thompson Coburn's labor and automotive practice groups.

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