

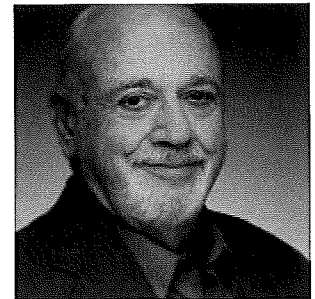
New Requirements for Paying Piece-Rate Employees for Rest Breaks

Gary
Hermann

What are the requirements for compensating piece-rate paid employees for rest breaks and other nonproductive time?

A number of recent California and federal cases regarding incentive pay, such as piece rates, have concluded that during time employees are subject to an employer's direction and control, when the employees do not have an opportunity to earn this incentive pay, they must be paid separately for such time.

The California Legislature attempted to codify and clarify those rulings with the passage of AB 1513, which went into effect on January 1, 2016.



Itemized Statements

Labor Code Section 226.2, added by AB 1513, now requires itemized statements of deductions to reflect the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid during the pay period.

The statute requires that compensation for rest and recovery periods shall be no less than the higher of:

- the applicable minimum wage, whether required by federal, state or local ordinances; or
- an average hourly rate determined by dividing the total compensation for the workweek by the total hours worked, exclusive of compensation for rest and recovery periods.

Rest Periods

Rest periods are based on the statutory requirement of no less than 10 minutes for every 4 hours worked or major portion thereof.

Using the statutory rest break requirements, you calculate the number of rest breaks required in the workweek at 10 minutes each average hourly rate referred to above. This would be the amount due for the rest break time unless the minimum wage requirements produced a greater result.

Any overtime worked in the workweek would be calculated at one-half the calculated average hourly rate. This is because straight time for these overtime hours already has been calculated in arriving at the average hourly rate.

For semi-monthly payrolls, employers are allowed to pay for rest and recovery periods at a rate of at least the minimum wage for the pay period in which the rest and recovery occurred, and then true up the compensation owed by applying the average hourly rate formula in the following pay period.

Recovery Periods

Recovery periods are defined in Labor Code Section 226.7 as the cool-down period afforded an employee to

prevent heat illness and may be determined by actual records or the employer's best estimate of such time.

The average hourly rate calculated for rest breaks is the same amount owed for the recovery time, so you would multiply by the recovery period time to determine the amount owed.

Nonproductive Time

Other nonproductive hours is time employees are subject to the employer's direction and control, exclusive of rest and recovery periods that are not directly related to the activity being compensated on a piece-rate basis. The rates for other nonproductive time must be no less than the applicable minimum wage.

There also are recordkeeping requirements for piece-rate employees that differ from nonexempt employees not paid on a piece-rate basis.