

California Workplace Law Blog

Insight & Commentary on California Workplace Law Issues & Developments

Why You Should Take a Closer Look at California's New Piece-Rate Legislation

By [Kyle C. Worrell](#) on November 13, 2015

Employers doing business in California have seen a barrage of class actions and representative claims for various alleged wage and hour Labor Code violations. Some cases are premised solely on "technical" wage statement violations, where the employer may not have even realized the practice was occurring or was unlawful.

California's new law regarding piece-rate compensation (which will be codified as Labor Code 226.2) provides yet another set of potential land mines for employers who pay employees on a piece-rate basis. These employers should take a close look at the new law and make any necessary changes to their payroll practices before the law becomes effective on January 1, 2016.

Here are some of the most important takeaways from AB 1513.

1. Itemized Statements Must Be Reviewed and Updated

In addition to the standard information included on itemized wage statements, employers who pay employees on a piece-rate basis now must separately state the (a) hours, (b) rate of compensation, and (c) gross wages related to each category of rest and recovery periods and nonproductive time ("NPT"). Failure to document this additional information may expose the employer to the penalties and fees associated with Labor Code Section 226.

2. Time-Tracking Systems Should Be Evaluated

Employers should verify that they have practices and procedures in place to properly track and record compensable rest and recovery periods, NPT, and time spent on piece-rate activities. The challenge in doing so will be determining where to draw the appropriate lines.

AB 1513 provides some guidance on an employer's options, but it leaves many questions unanswered. For

example, the statute defines other NPT as "time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis." NPT may be determined by an employer's "actual records" or "the employer's reasonable estimates" of NPT worked during the pay period. Reasonable estimates may be for a group of employees or for a particular employee. However, without statutory guidance on what types of estimates are "reasonable," or what constitutes a "group," employers choosing to make estimates may face litigation for cases that fall in a gray area. It remains to be seen whether the California Labor Commissioner will clarify these issues.

3. Payroll Systems May Require Reprogramming

Rest and recovery periods must be compensated at a regular hourly rate "no less than the higher of": (1) the "average hourly rate"; or (2) the applicable minimum wage. At the same time, NPT must be compensated "at a rate that is no less than the applicable minimum wage." Thus, with respect to the rest and recovery time, employers may be required to switch back and forth between an "average hourly rate" and/or an "applicable minimum wage," depending on the employee's performance during any particular pay period. Systems should be put in place to make sure the required calculations are occurring and are correct.

These are just a few of the requirements of AB 1513, which also includes certain affirmative defenses to such violations, as well as other obligations. In all, employers in California who pay some or all of their employees on a piece-rate basis should review AB 1513 closely and make sure to implement its provisions.

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