

One Minute Memo[®]



Court Of Appeal Gives California Employers A Piece Of Its Mind

Under federal law, employers can meet minimum wage requirements for piece-rate workers by paying them enough so that their total pay meets the minimum wage, on average, for the hours they work in a workweek, regardless of whether each hour was productive. But now the California Court of Appeal tells us that California is different. In *Gonzalez v. Downtown LA Motors*, the Court of Appeal held that employers who pay on a piece-rate basis for certain compensable tasks must also pay a separate minimum wage for non-productive time spent between those tasks.

The Facts

Automotive technicians paid on a piece-rate basis for automotive repair work brought a class action to recover unpaid minimum wages for the time they spent waiting between repairs. The technicians alleged that they had to remain near the premises during their shift so that they would be available for repair work when cars arrived at the shop without notice.

The employer contended that it had paid the required minimum wage for the waiting time because each technician's total compensation, on average, always met or exceeded the minimum hourly rate. The employer assured compliance with the minimum wage by calculating the total hours each technician worked each pay period—including hours spent waiting for repair work or performing non-repair tasks—and then multiplying this total by the required minimum wage. The employer would then supplement the technician's pay to cover any shortfall.

The trial court, rejecting the employer's defense, awarded \$1.5 million to the technician class in minimum wages for their waiting time and another \$237,840 in penalties for a willful failure to pay wages.

The Court of Appeal Opinion

The Court of Appeal, in affirming the trial court, extended the reasoning of a 2005 appellate decision—*Armenta v. Osmose, Inc.* *Armenta* involved hourly employees who maintained utility poles in remote locations and earned pay for hours considered "productive," but not for hours considered "nonproductive"—such as hours spent traveling to and from a job site.

The employer in *Armenta* argued that its pay system complied with the minimum wage because total employee compensation exceeded the product of total hours worked (both paid and unpaid) and the minimum wage. But *Armenta* ruled that California law does not permit an employer to meet minimum wage requirements by averaging the total compensation over the total hours worked in a given pay period. Rather, according to *Armenta*, the California minimum wage applies separately to each hour worked.

The Court of Appeal in *Gonzalez* extended *Armenta's* reasoning to the piece-rate context. The Court of Appeal began with the premise that because the technicians were under their employer's control for their entire shift—whether or not they were actually performing repairs—all hours of the shift were compensable. The Court of Appeal then reasoned that because the technicians were paid piece-rates for only the time spent on repair work, the employer had failed to pay the minimum wage

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for the remaining hours.

Gonzalez is a case of first impression that extends *Armenta* to cover piece-rate employees. Meanwhile a federal district court, in *Balasanyan v. Nordstrom*, has extended the reasoning of *Armenta* to commissioned employees. In both cases we expect the losing employers to seek further judicial review.

What *Gonzalez* Means for Employers

Gonzalez extends the law, contrary to well-settled, reasonable expectations of employers administering piece-rate and commission-pay systems, which the California Wage Orders specifically recognize. *Armenta* itself was a questionable decision, but at least it reflected a perceived unfairness that where hourly-paid employees are concerned, the employer's system unavoidably resulted in lower pay than the promised hourly wage. (For example, an employee promised a wage of \$20 who performs four hours of productive work and four hours of nonproductive work would really be paid just \$10 per hour.) However piece-rate workers differ from hourly wage-earners in that the piece rate directly reflects the value of the pieces produced—there is no promised, definable hourly wage.

Now, with the *Armenta* doctrine gone wild, California employers paying on a piece-rate or commission basis must consider revamping their pay systems to separately pay the minimum wage rate for hours during which employees are subject to the employer's control and not earning a piece rate or commission. Of course, employers should closely monitor the further judicial developments in both *Gonzalez* and *Nordstrom* to see whether a higher authority restores some common sense to this area of the law.

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