

One Minute Memo®



Certified Tire: Not Your Average Compensation System

By David Kadue and David Rosenberg

Seyfarth Synopsis. *The California Court of Appeal has upheld the validity of pay plans that guarantee a wage that meets or exceeds the minimum wage for all hours worked during a pay period, but that also enables the employees to earn higher pay based on certain production metrics.*

The Facts

In several coordinated wage and hour class actions, technicians working for Certified Tire and Services Centers, Inc. sued for unpaid minimum wages and rest periods. The technicians claimed that Certified Tire’s Technician Compensation Program (“TCP”) was an unlawful “activity-based compensation system” because it failed to pay separately for time spent on repair tasks and for rest periods. The technicians claimed that, under the TCP, Certified Tire improperly sought to “average” the hourly rate to comply with minimum wage requirements.

Under the TCP, technicians were paid an hourly rate for all work performed, but the rate varied from pay period to pay period. The TCP guaranteed a rate that exceeded the minimum wage for all hours worked. But technicians could earn more than the guaranteed rate based on a formula that rewarded them for repair work that was billed to customers as a separate labor charge.

The trial court, after certifying several subclasses of technicians, conducted a bench trial and issued a statement of decision in favor of Certified Tire. The technicians appealed.

The Appellate Court Decision

The technicians argued that Certified Tire was violating a rule established in *Armenta v. Osmose, Inc.*, a 2005 California Court of Appeal case. By that rule, an employer utilizing an activity-based pay plan must separately pay for time spent on non-productive tasks and for breaks. The technicians claimed that the TCP constituted an activity-based compensation system because they could not increase their base hourly rate when performing activities that did not generate billed repairs and, as a result, were not paid “separate compensation” for time spent on non-productive tasks. The Court of Appeal rejected the technicians’ argument, for two reasons.

First, the TCP was not an “activity-based compensation system,” but rather an “hourly rate system” that paid technicians at a single hourly rate for all hours worked. The technicians earned wages for every work activity they performed, including waiting for customers and performing tasks that did not have billed repairs costs associated with them. Even though the hourly rate varied from pay period to pay period, technicians always got a wage for all hours worked that exceeded the minimum wage, regardless of their productivity or the type of activity in which they were engaged during those hours.

Second, the Court of Appeal concluded that the technicians’ argument was based on the faulty premise that they were not paid for hours that did not generate billed repairs. The evidence demonstrated that they were paid for all hours worked regardless of what they were doing at the time. Technicians also received paid rest periods, even if no billed repairs were generated during rest periods.

Because technicians were paid an hourly rate at or above the minimum wage for each hour on the clock, the Court of Appeal concluded that this case did not involve improper averaging of an employee’s hourly rate to show compliance with minimum wage requirements.

What *Certified Tire* Means For Employers

Certified Tire makes it clear that employers may utilize hourly rate systems that are designed to incentivize employees to be more productive and that allow them to significantly increase their hourly compensation based on their level of efficiency. To be valid though, these hourly rate systems must pay at least the minimum wage for rest periods and for all hours worked.

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Seyfarth Shaw LLP One Minute Memo® | October 10, 2018

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