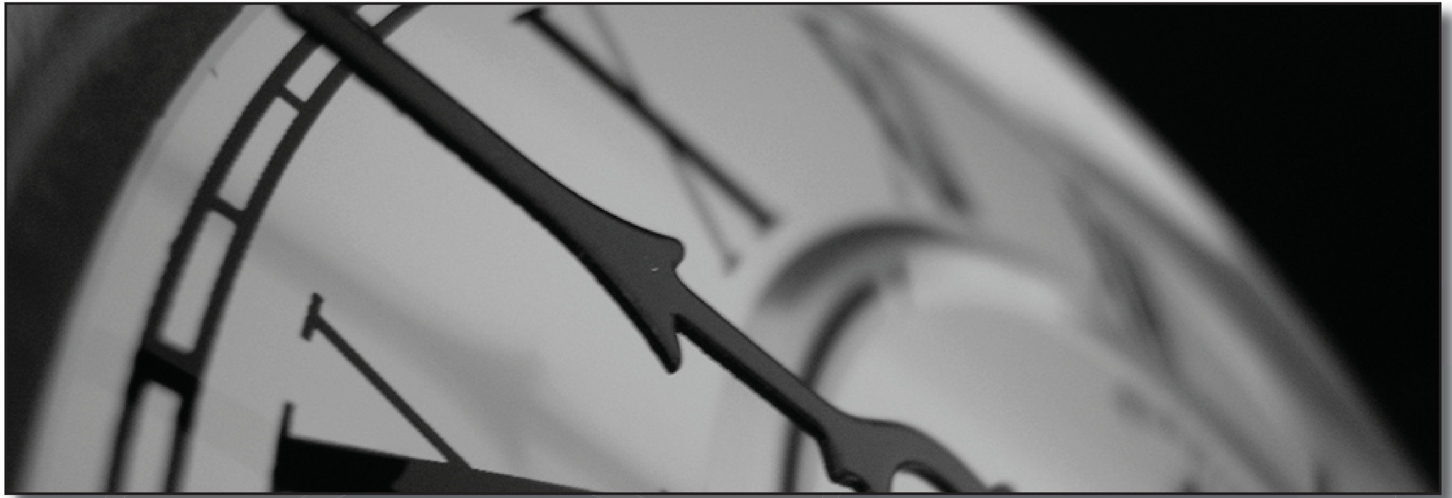

Recent Wage and Hour Cases of Interest to Employers

By Regina Silva, Esq.

Employer "could not have known" about the alleged unpaid time where there was no notification by employee. In White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, White, a store manager who quit his job 11 days after starting work, failed to meet his burden of showing that Starbucks had failed to pay him overtime wages or provide meal/rest periods where employee admitted that he did not notify Starbucks that he worked overtime or time off the clock, or failed to present evidence that Starbucks denied him meal or rest periods. In response to the employee's argument that an employer was affirmatively required to enforce meal periods, the court stated that, while Starbucks was required to offer meal breaks, it was not required to ensure that workers took such breaks.

In most cases, an employer won't be so lucky to have an employee admit that he/she did not notify his employer about working off the clock. In addition, an employer who should have know an employee was working overtime will more times then not be liable for overtime payments. However, this case makes it clear that where an employer has no reason to suspect employees are missing breaks, it is not required to do anything more where it has already offered the breaks.

Employee Who Provided Customer Service and Training Related to Company's Software Not Exempt From Overtime. In Eicher v. Advanced Bus. Integrators, Inc. (2007) 151 Cal.App.4th 1363, employer hired Eicher to provide on-site customer service and training of the company's software, which is used in sports and entertainment venues to schedule staff, manage payroll, credentialing and security, and to keep track of costs. The court held that the employer failed to prove that Eicher performed "office or non-manual work directly related to management policies or general business operations" of the company or its customers. The court concluded that Eicher "regularly engaged in the core day-to-day business" of the company, which was implementing the company's software at customer venues and supporting the customers.

Hence, when classifying an employee who performs computer related duties, it is important to carefully analyze what specific job duties the employee will be performing. So even if the employee has a specialized skill, such as computer expertise, if they are essentially responsible for assisting customers with the product, then the employee cannot be classified as exempt.

Prevailing Wages Owed To Workers For Renovation Work of Building Leased in Part to County. In Plumbers and Steamfitters, Local 290 v. Duncan (2007) 2007 WL 4303802, the court held that renovation performed by a real party in interest of a building leased to Humboldt County was a public works project under California prevailing wage law. The court made its finding, in part, relying on Labor Code section 1720.2's definition of "public works," which did not limit application to only new construction.

Hence, where "any construction work" exists, regardless of whether it is new construction or renovation work, it will be subject to prevailing wages if it meets the conditions set forth in section 1720.2.

Prevailing Wages Denied for Truckers Hauling To Nonpublic Works. In Williams v. SnSands Corp. (2007) 156 Cal.App.4th 742, the court ruled that truck driver employees who hauled building materials from public works construction sites to nonpublic works project sites were not entitled to prevailing wages under CA law where the off-hauling is unrelated to the performance of the prime public works contract. The court commented that it was irrelevant whether or not the truck drivers carried materials to or from the public work project site.

Thus, in analyzing whether truck hauling from a public works site is subject to the prevailing wage, a major factor is what role the transport of the materials plays in the performance or execution of the public works contract.

Undocumented Workers Had Standing To Assert Violation of Prevailing Wages. In Reyes v. Van Elk, Ltd. (2007) 148 Cal.App.4th 604, where there was no evidence that employees had submitted false work authorization documents, the court ruled that undocumented workers had standing to assert a violation of the prevailing wage laws.

Hence, an employer must pay undocumented workers the prevailing wages.

An Employee Incentive Compensation Plan Which Subtracted Operating Expenses From Revenues is Not an Unlawful Deduction. In *Prachasaisoradej v. Ralph's* (2007) 42 Cal.4th 217, Ralphs supermarket implemented a written incentive plan whereby certain employees of each store were eligible to receive, over and above their regular wages, supplementary money based on how the store's actual Plan defined profits (if any) for specified periods compared with preset profitability targets. Profits were determined by subtracting store operating expenses from store revenues. Employee filed suit claiming that the Plan's formula for calculating profit sharing payments violated CA law that prohibit employer from shifting certain costs to employees by recouping these amounts through employee earnings. The court found that Ralphs' Plan was not illegal just because costs/expenses, etc. were used to calculate store's profit, and, thus, the amount of money Ralphs was going to compensate its employees. Since the employees had already received their base wages from which there was no deduction, it was not improper to subtract the store's expenses from the incentive compensation payments given to employees.

Thus, profit/incentive compensation payments paid to employees may be based on company's profits/losses so long as the company does not make such deductions from employee regular/base wages.

Insurance Claims Adjustors Exempt From FLSA. In *In re Farmers Ins. Exch.* (9th Cir 2007) 481 F.3d 1119, insurance claims adjusters working in states outside the state of California filed suit seeking overtime pay and alleging that Farmers had improperly classified them as exempt administrative employees. In applying a regulation issued by the US Department of Labor (29 CFR 541.203), the court held that the insurance claim adjusters were exempt from the FLSA per the DOL regulation which provided that "[i]nsurance claims adjusters generally meet the duties requirements for the administrative exemption." But see California's Appellate court decision in Bell v. Farmers Ins. Exch. 115 Cal. App.4th 715, which held that insurance claims adjusters working in the State of California are non-exempt employees pursuant to an analysis of the term "administrative employee" provided for in the applicable California Wage Order.❖