

OREGON CASE UPDATE

Oregon Trial Court Rolls Back BOLI Guidance on Overtime Laws

case in point...

From the desk of John Kreutzer: Oregon overtime laws require that a non-exempt employee be paid one and one-half times their regular rate of pay if they work more than 40 hours in one work week, and for certain employees, if they work more than 10 hours in one day. But if an employee is entitled to both daily overtime and weekly overtime, what is the employer obligated to pay? Read on to learn more .

Claims Pointer: In this case arising from a dispute over overtime wages, the trial court held that the statutory scheme obligates employers to calculate both daily and weekly overtime pay and to pay the greater of the two. While the case was decided at the trial level and will not control other cases, it will provide persuasive authority that may influence other courts to follow suit.

Reyes v. Portland Specialty Baking, LLC, No. 16CV25324, Multnomah County Circuit Court (March 9, 2017)

would also be entitled to four hours of weekly overtime (3x12=36; 36+8=44).

Current and former employees of Portland Specialty Baking, LLC (“PSB”), a commercial bakery, brought a putative class action against PSB seeking damages and declaratory and injunctive relief for unpaid overtime. The employees argued that under Oregon law, they were entitled to both daily and weekly overtime for working more than 10 hours in a 24-hour period and more than 40 hours in a seven-day workweek. PSB moved to dismiss the employees’ claims on the ground that the statutory scheme did not support such an argument.

The Oregon Bureau of Labor and Industries (“BOLI”) Wage and Hour Division provides employers with guidance on complying with state overtime laws. Prior to December 2016, BOLI indicated that where an employee who was entitled to daily overtime but also worked more than 40 hours in a week, the employer should calculate both daily and weekly overtime and then pay only the greater of the two. In December 2016, however, BOLI revised its position to state that employers should pay both daily and weekly overtime. In other words, BOLI’s position in and after December 2016 was that employers were not permitted to offset daily overtime with weekly overtime or vice versa. In our prior example, under the old interpretation, the employee would be entitled to six hours of overtime because he worked six hours of daily overtime and only four hours of weekly overtime; but under the new interpretation, the employee would be entitled to ten hours of overtime, the sum of daily and weekly overtime.

The employees’ argument was based on an apparent conflict between two statutes. The first statute, ORS 653.261, provides that “... after 40 hours of work in one week overtime may be paid, but at no case at a rate higher than one and one-half times the regular rate of pay of the employees.” The second statute, ORS 652.020, which applies to manufacturing employees and employees in other specifically enumerated industries, provides that those employees are entitled to be paid overtime for work in excess of 10 hours in one day. The confusion arises where an employee works, for example, three 12-hour days and one additional shift that brings the total number of hours over 40 for that week. The employee would be entitled to two hours of daily overtime for each of the 12 hour shifts. If the employee then worked another eight hour shift, they

The trial court examined the relevant statutes and ultimately determined that the law obligates employers to pay only the greater of daily and weekly overtime. According to the court, this interpretation avoids inconsistencies resulting in double-payments and ensures that employees receive one-and-one-half times their regular rate of pay for overtime as the statutes require.



Contact: John Kreutzer | www.smithfreed.com | email: jkreutzer@smithfreed.com

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this email without seeking professional counsel.

OREGON CASE UPDATE

Oregon Trial Court Rolls Back BOLI Guidance on Overtime Laws

case in point...

While the decision provides much needed clarity on this issue, because the ruling was made at the trial level, it is not binding on any other case and applies only to the parties of this case. Thus, other employees may still seek payment of both daily and weekly overtime. It remains to be seen whether appellate courts will provide additional interpretation of these statutes or whether BOLI will amend its position. On the other hand, a recently introduced senate bill that would restore and codify BOLI's prior interpretation (that employers need only pay the greater of daily and weekly overtime) has been introduced and seems to enjoy widespread bipartisan support. We will be following this bill with interest to see whether and when this issue will be conclusively resolved. You can review the current version of the bill here:

<https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB984/A-Engrossed>

Case updates are intended to inform our clients and others about legal matters of current interest. They are not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.



Contact: John Kreutzer | www.smithfreed.com | email:jkreutzer@smithfreed.com

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this email without seeking professional counsel.