

This is the second of four (4) in a series of updates for California employers for the upcoming 2016 year. This update address the Piece Rate wage change and the authorization given to the Labor Commissioner to levy an employer's property.

**The information below is designed to provide general information and guidance concerning employment-related issues. It is presented with the understanding that Greear Consultant Group, LLC is not engaged in rendering any legal opinions. If a legal opinion is needed, please contact the services of your own legal advisor, or ask GCG for a referral.**

### **AB1513**

Many industries in California, and throughout the country, have traditionally utilized piece-rate plans to compensate employees and incentivize productivity. Many recent cases have removed the California employers defense that as long as the number of hours worked and paid were equal or greater to minimum wage under their piece rate compensation then in fact they were being paid correctly.

Assembly Bill (AB) 1513 has created a new California Labor Code section 226.2 effective January 1, 2016 and sets forth requirements for the payment of a separate hourly wage for "nonproductive" time worked by piece-rate employees, and separate payment for rest and recovery periods to those employees.

The new law specifically requires <sup>1</sup>

- Employees must be separately compensated for the time to take rest and recovery breaks. These breaks must be paid at an hourly rate no less than the greater of either the applicable minimum wage or the employee's average hourly wage for all time worked (exclusive of break time) during the work week.
- Employees must be separately compensated for "other nonproductive time," which is defined 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."
  - The employers challenge will be defining what "activity" is compensated by a piece-rate and what closely related activities are not compensated by the piece rate. There is an additional issue with determining what work time is spent in activities that are not "directly related" to the piece rate compensation plan.
- The law specifically provides that this "other nonproduction time" time must be compensated at an hourly rate no less than the applicable minimum wage. The statute provides that the amount of "other nonproductive time" to be paid may be determined either by actual records or by the employer's "reasonable estimate," but the statute provides no further direction on what differences may exist between the "actual records" or the employer's "reasonable estimate."
- Employee wage statements will be required to include the following information, besides that which is already required under existing Labor Code section 226(a):

---

<sup>1</sup> www.littler.com

- The total hours of compensable rest and recovery periods, the rate of compensation for those periods, and the gross wages paid for those periods during the pay period.
- The total hours of other nonproductive time, the rate of compensation for that time, and the gross wages paid for that time during the pay period.

Take heart the New Labor Code section 226.2 does provide a limited safe harbor for employers that

- Have not been sued regarding these issues prior to April 2014
- Come into compliance with all of the obligations now described in section 226.2 before the end of 2015.
- Pay actual or liquidated damages by the end of 2016 by fully compensating their specified employees for all under-compensated or uncompensated rest periods, recovery periods, or unproductive time between July 1, 2012 and December 31, 2015.

Any employers utilizing the piece rate system are strongly encouraged to advantage of this safe harbor provision.

### **SB588<sup>2</sup>**

This law gives The Labor Commissioner authorization to file a lien on real estate OR a levy on employers property OR impose a stop order on an employers business in order to assist an employee in collecting unpaid wages where there is a judgement against the employer.

Any employer, or individual acting on behalf of an employer, who violates any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or who violates other related provisions of law may be held liable as the employer for such violation. A bond of up to \$150,000 may be required of an employer who does not promptly pay a judgment for unpaid wages.

Good luck out there California Employers.

---

<sup>2</sup> Mondaq.com