



Employment Auditor's Notepad

ARBITRATION AGREEMENTS INEFFECTIVE IN ADMINISTRATIVE ACTIONS

In *Sonic-Calabasas A, Inc. v. Moreno*, the California Supreme Court ruled that employment arbitration agreements cannot be used to preclude an employee from seeking administrative relief from the Department of Labor Standards Enforcement ("DLSE") for claims for unpaid wages. The Court held that such preclusion would violate California law is unconscionable.

Plaintiff Moreno was a former employee of Sonic-Calabasas. As a condition of employment, Moreno signed an agreement requiring him to arbitrate all disputes arising out of his employment. After Moreno's employment ended, he filed a claim with California's DLSE. The employer filed a motion to compel arbitration.

The California Supreme Court ruled that an arbitration agreement cannot be used to prevent an employee from pursuing administrative relief for unpaid wages through the DLSE. However, the Court held that in the event of an appeal of the DLSE's decision (following the administrative hearing), that appeal can be compelled to arbitration.

Salaries for Non-Exempt Employees?

MUTUAL WAGE AGREEMENT DEFEATS OVERTIME CLAIMS

The California Court of Appeal has ruled that an employer and a non-exempt employee can have an arrangement whereby the employee receives a fixed salary for all work, including overtime, so long as the agreement provides for the payment of overtime wages at the correct premium rate.

In *Arechiga v. Dolores Press*, Arechiga, a janitor, orally agreed to work eleven hours a day and six days a week, and the parties had a written agreement which stated that Arechiga would be paid \$880 weekly. He sued Dolores Press for unpaid overtime, asserting that his salary of \$880 compensated him only for a regular 40-hour workweek at an imputed base pay of \$22 per hour, and that he was entitled to unpaid overtime at the overtime premium rate for each week.

Arechiga based his claim on Labor Code section 515, which states that "[f]or the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary." Dolores Press asserted that under California's doctrine of explicit mutual wage agreement, parties may agree to a guaranteed fixed salary so long as the employer pays the employee for all overtime at least one and one-half times the employee's base rate of pay.

The appellate court rejected the argument that Labor Code Section 515 outlawed explicit mutual wage agreements. Because the evidence demonstrated that the parties agreed to a base rate of \$11.14 per hour, the \$880 weekly salary fully compensated Arechiga for all hours of overtime worked. The Court of Appeal therefore upheld judgment for Dolores Press.

Employers should be careful when entering into mutual wage agreements to make sure they comply with the legal requirements, such as: specifying the basic hourly rate which the guaranteed salary is based upon; specifying that the employee will be paid at least one and one-half times the agreed-upon rate for hours in excess of 8 in a day and 40 in a week; and notifying the employee that the salary will cover both regular and overtime hours.

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