

EMPLOYMENT LAW UPDATE

January 3, 2006

Issue No. 157

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California Law

***In determining whether California's minimum wage law has been violated, an employer may not average the total hours worked. The minimum wage standard affixes to each hour worked for which the employee was not paid. When the employee claims a violation of minimum wage law, waiting time penalties are calculated according to the minimum wage rate, not the employee's contractual wages.***

***Armenta v. Osmose, Inc.*** (2<sup>nd</sup> App. Dist., Dec. 29, 2005) 06 C.D.O.S. 49

By Jordan Rojas

Defendant Osmose, Inc. is in the business of maintaining standing wood utility poles for major utility companies. Plaintiffs were a group of employees who were paid hourly wages ranging between \$9.08 and \$20 depending on whether they were crew members or foremen. Typically, Osmose, Inc. required the crew to meet in the morning and travel in an Osmose, Inc. vehicle to the job site. The foremen were responsible for maintaining daily records of the work performed in the field. Employees' time was classified as productive or nonproductive depending on whether the hours were directly related to maintaining the utility poles in the field.

The employees claimed that Osmose, Inc. violated California's minimum wage law (Labor Code § 1194) because they were not compensated for a myriad of "nonproductive" tasks including: (1) travel time in company vehicle, (2) time spent loading equipment and supplies into the company vehicle, (3) time spent

doing daily and weekly paperwork, and (4) time spent in maintaining the company vehicles.

Osmose, Inc. claimed that it had not violated California's minimum wage law because the employees were compensated weekly at an amount exceeding the total hours worked multiplied by the applicable minimum wage. The trial court disagreed and concluded that Osmose, Inc.'s method of "averaging" would permit it to extract work from its employees without paying them for all hours worked in violation of California's policy of liberally construing California's wage and hour provisions.

The Second Appellate District affirmed the trial court's ruling. Numerous federal courts have adopted the averaging formula in assessing minimum wage law violations. However, the federal minimum wage laws differ significantly from California's minimum wage law.

The court held that while the averaging method utilized by federal courts may be appropriate in light of federal public policy, it does not advance the policies underlying California's minimum wage law and regulation. California's labor statutes reflect a strong public policy in favor of full payment of wages for all hours worked. The averaging method advocated by Osmose, Inc. effectively reduces the employees' contractual hourly rate and is inappropriate. The minimum wage standard affixes to each hour worked by employees for which they were not paid. Here, the court found that Osmose, Inc. violated the minimum wage law by failing to pay for driving time or time spent by foremen processing paperwork.

Under California Labor Code section 203, an employer who willfully fails to pay wages of an employee who is discharged or who quits must pay the employee wages for thirty days or until an action is commenced. "Willful" merely means that the employer intentionally failed or refused to perform an act which was required to be done. A good faith belief in a legal defense will preclude a finding of willfulness.

The court found that although no California court had addressed the propriety of using the averaging method to determine whether the minimum wage law was violated, Osmose, Inc. was aware that employees were not being compensated for nonproductive time, which supported the award of waiting time penalties under section 203.

Because the employees were claiming a violation of the minimum wage law, the court concluded that the waiting time penalties were calculated using the minimum wage rate and not the employees' contractual hourly rate.