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Client Alert

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CALIFORNIA UPDATES: SUPREME COURT CLARIFIES PROPER CALCULATION OF MISSED MEAL BREAK PREMIUMS; NEW WAREHOUSE QUOTA REGULATIONS ISSUED; AND STATE COVID-19 PAID SICK LEAVE LAW EXPIRES

California Supreme Court rules on proper method of calculating premium pay for missed meal breaks of nonexempt employees:

Under the California Labor Code an employer who fails to provide a meal or rest period must provide “premium pay” in the form of an additional hour of pay for each workday that a meal/rest period was not provided. The California Supreme Court issued a recent opinion outlining the correct rate to be used by employers when paying affected employees their missed meal break premiums. The Court analyzed the meaning of “regular rate of compensation” used by employers to issue premium pay, concluding that simply applying an employee’s regular hourly wage is incorrect. Instead, employers must use the same “regular rate” that they apply for overtime, which factors in nondiscretionary bonuses, incentives and other payments that fall outside of an employee’s base hourly wage.

Employers should review their payroll policies to ensure that employees are being paid based on the correct calculation. This requires employers to factor in *all remuneration* for employment, such as hourly earnings, salary, piecework earnings and commissions. Items which are excluded from calculation of premium pay include gifts, vacation pay, expense reimbursements, and discretionary bonuses.

Governor Newsom enacts first-in-the-nation law regulating employee quotas at warehouse distribution centers:

Governor Newsom enacted a new law that applies to warehouse distribution centers who impose production quotas on employees. The law, which goes into effect January 1, 2022, covers employers who operate merchandise warehousing and storage facilities, as well as those selling goods to other businesses and those engaged in selling merchandise through the Internet or catalogs. Covered businesses have 100 or more employees at a single distribution center or 1,000 or more employees at one or more centers within California.

Employers cannot require quotas that interfere with meal or rest breaks, use of restrooms, or compliance with occupational health or safety laws. Employers must provide new hires with written descriptions of applicable quotas and must include each work standard and the defined time period in which the work must be completed. The descriptions must also identify any potential adverse employment actions if the quota is not met. *Existing employees must receive the descriptions by January 31, 2022.*

Employees who believe that they were the subject of a quota violation can request a written description of their quota and their work speed data for the prior 90 days. Employers will have 21 days to respond to the request. Employers who violate the law will face penalties, including costs and attorneys’ fees. There is also a presumption of unlawful retaliation if adverse action is taken against employees

who requested their quota or work speed data within the previous 90 days. Moreover, the law also allows suspected violations to form the basis of actions under the Private Attorneys General Act (PAGA).

California COVID-19 Supplemental Paid Sick Leave expires, but local laws remain in effect:

Last March a California law went into effect that expanded the requirement for employers to provide COVID-19 Supplemental Paid Sick Leave (SPSL). Under the law the benefit was expanded to apply to employers with over 25 employees. It also created a new “bank” of COVID-19 sick leave and provided an expanded list of qualifying reasons to use SPSL. The State law recently expired, on September 30, 2021. However, both the City and County of Los Angeles continue to maintain their own SPSL ordinances, which will not expire until two weeks after expiration of the local emergency period.¹

¹ Details of the Los Angeles City and County SPSL ordinances can be found in the February 2021 Client Alert. *See* “Bulletins” at www.talktaylorlaw.com.