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**CALIFORNIA SUPREME COURT RULES ON HOW TO CALCULATE OVERTIME ON FLAT SUM BONUSES**

In an employee-friendly decision, the California Supreme Court has ruled that when a nonexempt employee receives a nondiscretionary “flat sum bonus” covering a single pay period, the overtime rate is based on the employee’s regular, non-overtime hours in the pay period, rather than the total hours. The new case is [Alvarado v. Dart Container Corp. of California](#) (S232607, March 5, 2018).

Alvarado was a warehouse employee who was paid on an hourly basis and received an “attendance bonus” of \$15.00 for each full shift that he worked on either a Saturday or Sunday. The dispute in this case was over how Dart factored the flat sum bonus into its calculation of Alvarado’s regular rate of pay in order to ensure that his overtime rate of pay reflected all forms of compensation that he earned.

Dart divided Alvarado’s total compensation during a pay period (including compensation for regular hours, overtime hours, and any attendance bonuses) by the total number of hours he worked (regular and overtime) to determine the regular rate of pay. Alvarado, however, argued that the formula should allocate the flat sum bonus only to non-overtime hours worked. His overtime formula divided the bonus only by the number of non-overtime hours, multiplied that per-hour number by 1.5, and then multiplied that rate by the number of overtime hours. The distinction between the two formulas is whether the bonus is allocated to all hours worked (Dart’s formula), or only to non-overtime hours worked. The formula for which Alvarado advocated works out more favorably to employees.

In support of his position, Alvarado relied on the California Division of Labor Standards Enforcement’s (DLSE) Enforcement Policies and Interpretations Manual. The DLSE Manual states that when employees earn a flat sum bonus, their regular rate is determined by dividing the bonus by the maximum legal *regular* hours worked, which includes non-overtime hours only, during the relevant pay period.

Dart, on the other hand, argued that its formula complied with the federal Fair Labor Standards Act. Moreover, the company pointed out that pursuant to the California Supreme Court’s 1996 decision in *Tidewater Marine Western, Inc. v. Bradshaw*

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(1996) 14 Cal. 4th 557, the DLSE Manual contains only the DLSE's interpretation of the law and is no more than an unenforceable underground regulation.

The Court agreed with Dart that the DLSE Manual is an underground regulation and not entitled to any special deference. Nevertheless, the Court said that it can still adopt the DLSE's interpretation if the agency's interpretation is correct. Relying on the state's policy favoring limits on hours worked and the principle that state laws are to be liberally construed in favor of worker protection, the Court followed the DLSE's interpretation regarding overtime calculations on a flat sum bonus. The Court also rejected Dart's request for prospective-only application of the Court's interpretation of the formula for calculating Alvarado's overtime rate when he earned an attendance bonus.

### Lessons for Employers

A key lesson from the *Dart Container* ruling is that employers should closely follow the DLSE's interpretation of the law as stated in the DLSE Manual, even though the DLSE Manual technically is not entitled to any weight. The case also highlights the requirement under California and federal law that nondiscretionary bonus amounts must be factored into a nonexempt employee's overtime rate of pay. Employers that pay flat sum bonuses, in particular, should check their formulas to ensure overtime calculations are in line with the DLSE's interpretation. The Court noted that its decision was limited to flat sum bonuses comparable to Alvarado's attendance bonus, and that "other types of non-hourly compensation, such as a production or piecework bonus or a commission, may increase in size in rough proportion to the number of hours worked, including overtime hours, and therefore a different analysis may be warranted."

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