

## **Piece Rate Compensation: Litigation Update**

### ***Gonzalez v. Downtown LA Motors***

The California Supreme Court has denied review of a California Court of Appeal case which held that piece-rate-paid employees are entitled to separate hourly pay for non-productive time. As a result, the Court of Appeal's decision in *Gonzalez v. Downtown LA Motors* is now binding precedent. Western Growers and other industry groups had submitted letters in support of the Appellant's petition for review. A sample piece rate policy in light of *Gonzales* and *Bluford v. Safeway Stores* is available at the end of this article.

In *Gonzalez v. Downtown LA Motors*, a decision which is now binding precedent, the appellate court held the general rule that "employers must pay for all hours worked and may not average paid, productive hours with non-paid, non-productive hours" applies to piece-rate employees. Therefore, the class of auto technicians was "entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer during their work shifts."

### ***Bluford v. Safeway Stores, Inc.***

With *Gonzales* now the law of the land, employers' hopes rest on the prospects of the California Supreme Court will taking up review in *Bluford v. Safeway Stores, Inc.*

In *Bluford*, a class action lawsuit was brought on behalf unionized truck drivers who worked throughout Northern California. The compensation scheme at issue was negotiated and ratified in a collective bargaining between the plaintiffs' union representative and Safeway. Under the compensation plan at issue, drivers' wages were based on a mileage rate for miles driven and different rates for other tasks. Drivers logged their mileage and activities, but there was no means for recording rest breaks. Employees were not paid a separate rate for paid rest breaks, and there was no indication on the employees' wage statements that time spent on rest breaks would be paid. However, the collective bargaining agreement did have include a lawful paid rest period policy and Safeway attempted to ensure that its drivers took their breaks by requiring drivers to sign their trip sheets to certify that they were authorized and permitted to take their rest breaks.

Unfortunately, the Court of Appeal held that even though Safeway had a policy to provide paid rest periods, under a piece-rate system rest periods must be separately compensated. Since Safeway failed to compensate employees separately for rest periods, the employer's policy amounted to averaging hourly compensation and thus did not comply with California minimum wage law, *even though* the mileage rates and activity rates were negotiated *to include* payment for expected rest breaks.

Safeway is seeking review of the Appellate Court's decision and Western Growers will be submitting a letter supporting this petition for review.

With *Gonzales* now the law of the land, employers' hopes rest on the prospects of the California Supreme Court will taking up review in *Bluford v. Safeway Stores, Inc.* California employers who utilize piece-rate compensation systems are now confronted with a dilemma. In order to properly compensate piece-rate employees for their daily authorized rest periods, employers may have to deviate from the existing piece-rate compensation system to hourly compensation with a production incentive bonus. Thus, authorized rest periods would be compensated at no less than the applicable minimum wage or the authorized general labor rate of the employer. In addition, employees would be eligible to receive an additional production incentive bonus that, at the end of the day, would be equal to what they would have earned under a pure piece-rate compensation system.

Click [here](#) for an example of a policy addressing the issue of "non-productive" time for both hourly and especially piece-rate employees following the *Gonzalez* and *Bluford*. Special thanks to Rob Roy (Ventura County Agricultural Association) who created the policy, with review and input provided by Carl Borden (California Farm Bureau Federation), Terry O'Connor (Noland Hamerly Etienne & Hoss) and Jason Resnick (Western Growers).

"Non-productive" time involving piece-rate employees has become a fertile area of class action litigation, as demonstrated by the *Gonzalez* and *Bluford* cases. Hopefully, the California Supreme Court will grant the employers' petition in *Bluford*. However, unless these cases are overturned, employers who use piece rate compensation systems will be exposed to litigation based upon the reasoning in both decisions.

This policy is intended to guide California agricultural employers and farm labor contractors to comply with the holdings of these cases, pending a Supreme Court decision to the contrary. This policy is not and will not protect any employers from previous violations of wage and hour laws involving "non-productive" time over the last 3-4 years. It will, however, stop the clock on future exposure once it is implemented. As with all such policies, they are of no effect unless the supervisors are properly administering the policy. For this reason, employers are advised to develop forms to permit supervisors/foremen to properly document daily "non-productive" activities and the time spent in such activities. The employer must also ensure that the "non-productive" time is listed on the employee's paystub as "miscellaneous time" that has been properly recorded and paid to avoid further penalties under Labor Code Section 226.

Pending the California Supreme Court's decision to take up review (or not) in *Bluford*, it is recommended that members who utilize piece-rate compensation systems seriously consider modifying their current practices and review rest period policies to avoid costly class action litigation over the proper payment of daily authorized rest periods.