Labor and Workforce Development Agency

California Department of Industrial Relations

AB 1513

Piece-Rate Legislation

January 1. 2016

Presentation by:

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AB 1513

AB 1513 added a new section 226.2 to the Labor Code concerning piece-rate compensation.

- **The new section does two things:**

  1. **Clarifies pay requirements for rest and recovery breaks and other nonproductive time going forward.**

  2. **Provides an optional means to make back payments for previously uncompensated time in exchange for relief from damages and penalties.**

Piece-Rate Compensation – What is it?

Piece rate or piece work is defined as "Work paid for according to the number of units turned out." (American Heritage Dictionary.) Piece-rate compensation is based on paying a specified sum for completing a particular task or making a particular item.

Examples include --

- Farmworker paid by volume of crops picked
- Mechanic paid a "book rate" for type of repair
- Factory worker paid by number of items made
- Driver paid by the mile
- Technician and tradesperson paid by number or volume of installations

Court Decisions Leading to AB 1513

- Two recent California Court of Appeal decisions, *Gonzalez v. Downtown LA Motors* (2013) 215 CA4th 36, and *Bluford v. Safeway Stores, Inc.* (2013) 216 CA4th 864, clarified the following rules:
  - Piece-rate compensation only pays for productive time, *i.e.* time spent in activities that generate piece-rate earnings.
  - Mandated breaks and other nonproductive work time must be separately compensated.
- These decisions led to class actions and PAGA cases to recover back pay and penalties from employers who had not paid employees separately for this time.
- While *Gonzalez* and *Bluford* remain in dispute, employer and employee representatives joined the Administration in an effort to resolve back wage claims and set compensation rules going forward without further litigation. The result of this effort was AB 1513.

Goals Underlying the AB 1513 Solution

- **AB 1513 was designed to resolve these issues in a way that should:**
  - **Reach more piece-rate workers and provide more timely back pay recoveries**
  - **Relieve employers of related liability for statutory penalties and damage for past violations**
  - **Clarify compensation requirements going forward**

Elements of AB 1513

- **Prospective Pay Requirements for Rest and Recovery Breaks (effective 1/1/2016):**
  - **Employers will be required to pay an average hourly rate (based on total workweek compensation) for mandated rest and recovery breaks.**
  - **This time and pay must be listed separately on the employee's wage stub.**

Elements of AB 1513

- **Pay Requirements for Other Nonproductive Time:**
  - **"Other nonproductive time" means time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.**
  - **Employees must receive at least minimum wage for this time.**
  - **Employers may choose to track and pay for other nonproductive time based on actual records, or they may use reasonable good faith estimates.**

Elements of AB 1513

- **Pay Requirements for Other Nonproductive Time (continued):**
  - **Employers who make a good faith error in determining the amount of other nonproductive time worked in a pay period may be entitled to relief from penalties and damages (but not liability for wages) if they provide honest wage stub information and haven't violated minimum wage requirements.**
  - ***Alternatively*, employers may choose to pay employees a base hourly rate of at least the minimum wage (in addition to any piece-rate) for all hours they are on the job, which automatically meets the pay requirements for other nonproductive time.**
  - **This time and pay also must be listed separately on the wage stub unless the employer chooses the alternative of paying a base hourly rate of at least minimum wage for all hours on the job.**

Elements of AB 1513

- **Back payments and relief from related penalties and liquidated damages:**
  - **Employers will have 11 ½ months to make back payments to their employees.**
  - **Employers who do so will have a legal defense to claims for damage and other penalties associated with the prior failure to pay what was due for such time.**

Major Elements of Back Payment and Penalty Relief Plan

- **Back payments are required for time period of July 1, 2012, through December 31, 2015.**
  - ✓ **Employer may pay actual amounts owed plus 10% interest.**

    or
  - ✓ **Pay 4% of gross earnings during look-back period (with some credits for prior payments – see statute)**
- **Payments must be accompanied by wage statement showing what the payment is for and how it was calculated.**

Major Elements of Back Payment and Penalty Relief Plan (continued)

- **Employers must notify Department of Industrial Relations by July 1, 2016, of their election to make the back payments.**
  - **Employers can go to DIR's website and submit this notice directly using an online form.**
  - **DIR's website will have a list of employers who submit this notice. The list will stay posted through March 31, 2017.**
- **Back payments must be made by no later than December 15, 2016.**
  - **Employers must make a diligent effort to locate former employees. Payments for employees who can't be located must be made to the Unpaid Wage Fund and include an additional administrative fee.**

Major Elements of Back Payment and Penalty Relief Plan (continued)

- **Employers who make required payments have an affirmative legal defense against any claim for damages or penalties based on not having separately compensated piece-rate workers for rest and recovery breaks and other nonproductive time prior to January 1, 2016.**

- **The statute of limitations for these claims will be tolled during the notice and payment periods.**

- **The back payment and penalty relief provisions will sunset after all time limits have run.**

Exceptions

- **Certain claims and cases will be excluded from the penalty relief provisions, including:**
  - ✓ **Cases fully resolved by final judgment or order prior to January 1, 2016;**
  - ✓ **Pending cases filed prior to March 1, 2014;**
  - ✓ **Pending cases filed prior to April 1, 2015 with allegations of wage theft through use of ghost workers;**
  - ✓ **Claims that employees were discouraged or prevented from taking mandated breaks;**
  - ✓ **Claims against new car dealers; and**
  - ✓ **New claims accruing on or after January 1, 2016.**
- **Companies involved in a recent major merger acquisition will have additional time to comply with the new pay requirements, provided all additional compensation, plus interest, is paid by April 30, 2016.**

AB 1513 -- Other Items to Note

- **The new section does not limit or alter wage and hour requirements.**
- **Pending PAGA notices based on failure to separately compensate workers for mandatory breaks and other nonproductive time will be voided (as to only those claims) as of January 1, 2016, and must be refiled afterward.**
- **The law does not affect attorney's fees claims, either positively or negatively, in related litigation filed before October 1, 2015.**

For more information go to the Department of Industrial Relations' website at www.dir.ca.gov and find the link for AB 1513.

The AB 1513 page includes:

- ✓ FAQs on AB 1513.
- ✓ The employer online back pay notice form and a list of employers who have submitted this notice.
- ✓ An email address that can be used to send additional inquiries on AB 1513 – AB1513@dir.ca.gov.

California Department of Industrial Relations

www.dir.ca.gov