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SLG Class Action Survival Guide Series

Wage and Hour claims outpace all other types of workplace litigation. In 2012 alone, settlements of wage and hour cases equaled \$467 million bringing the total since 2007 to about \$2.7 trillion. In class actions, companies paid an average of \$4,800,000 per case.

Nearly every class action lawsuit that SLG has recently seen has included claims for incorrect piece-rate compensation, incorrect nonproductive time compensation and inaccurate wage statements.

Many, many commentaries, consultants and lawyers are weighing in with their "expertise" on addressing these issues. As always, you can rely on SLG, the steady hand, to continue keeping you informed as these lawsuits evolve and to let you know if the Governor comes to his senses.

Nonproductive Time Compensation

(Part 2 of 5)

What is it?

Nonproductive time ("NPT") is all work time where the employee is not directly engaged in the piece-rate activity. This includes:

- o Rest/Recovery periods
- o Travel time
- o Calisthenics
- o Production Gaps
- o Training and Meetings

What it technically means?

All NPT must be paid separately from piece-rate work. All NPT should be paid at an hourly rate that is no less than the minimum wage.

What it really means?

...Just when you thought that "Insanity" is the latest craze in physical fitness and workouts, it's not! It's the Julie Su formula!

Julie Su, the California State Labor Commissioner, has unilaterally decided that rest periods should be compensated at the average piece-rate earnings for the week. This means that to determine the average piece-rate: (1) the company must subtract the rest period time taken by the employee throughout the week; (2) divide the total piece-rate earnings for the week by the remaining hours worked at piece-rate without including the rest periods; and (3) use the resulting rate to compensate for rest periods. [See https://www.dir.ca.gov/dlse/ExampleRestAndMealPeriods.pdf](https://www.dir.ca.gov/dlse/ExampleRestAndMealPeriods.pdf).

Counsel to Management:

- While the courts have not yet ruled on Julie Su's formula, SLG recommends that companies compensate rest periods at the average piece-rate earnings.
- SLG also recommends that the companies compensate heat illness recovery periods, which like rest periods are considered "hours worked", at the average piece-rate earnings.
- Other miscellaneous NPT can be separately compensated either at minimum wage or at the company's guaranteed base rate, whichever is higher.
- Companies must ensure that the Cal. Lab. Code §2810.5 Notice to Employees accurately reflects the NPT rates.
- Proper NPT compensation is a complicated issue that is best accomplished with the assistance of counsel. Please contact The Saqui Law Group if you have any questions.

Coming Next: Compliant Wage Statements...

