

Alert | Labor & Employment



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PA Superior Court: For Some Employees, PA Law Requires More Overtime Compensation

Employers with operations in Pennsylvania should beware that a recent Pennsylvania Superior Court opinion confirmed what federal courts in Pennsylvania previously predicted: Pennsylvania law entitles certain employees to more overtime pay than federal law. On Dec. 22, 2017, Judge Jeffery Moulton ruled that the Pennsylvania Minimum Wage Act (PMWA) entitles a nonexempt, salaried employee to an overtime premium of one-and-one-half times the regular rate, as opposed to the half-time premium allowed under federal law.

Chevalier v. General Nutrition Centers, Inc. (___ A.3d ___, 2017 WL 6594059, *1 (Pa. Superior Ct. Dec. 22, 2017)) stems from a class action brought on behalf of employees who worked in various different store manager positions. General Nutrition Centers, Inc. (GNC) paid these employees a fixed weekly salary, *i.e.*, the same base amount each week regardless of the number of hours actually worked. In addition, GNC paid overtime compensation for any hours worked over 40 in a week. GNC calculated overtime compensation due, first, by determining the employee's "regular rate" by dividing the employee's total weekly compensation by total hours worked in the week. Second, GNC multiplied that regular rate by .5 and then by the total number of overtime hours worked. Thus, for example, if GNC paid an employee a weekly salary of \$1,000, and the employee worked 50 hours in a week, GNC paid the employee \$100 in overtime compensation for that particular week ($\$1,000 \div 50 = \20 ; $(\$20 \times .5) \times 10 = \100).

Chevalier addresses two distinct issues notable for employers. First, the plaintiffs argued that the trial court should have calculated the regular rate by dividing the employees' total weekly compensation by 40 hours, and not by total hours actually worked during the week. In rejecting the plaintiffs' argument, the *Chevalier* court held that calculating the "regular rate" for salaried employees under Pennsylvania law is

in accord with federal law and thus requires dividing total weekly compensation earned by total hours actually worked. Had the *Chevalier* court ruled otherwise, many Pennsylvania employees would be entitled to significantly greater overtime compensation than under federal law. 2017 WL 6594059, *17.

Second, the *Chevalier* court addressed the proper overtime premium under Pennsylvania law. As federal courts have previously predicted, the *Chevalier* majority sided with the plaintiffs, effectively deciding that there is no such thing as a half-time overtime premium under Pennsylvania law. In so ruling, the majority relied on the fact that the PMWA requires employers to pay “not less than 1-1/2 times the employee’s regular rate of pay for all hours in excess of 40 hours in a workweek.” 43 Pa. Code § 231.41. The *Chevalier* majority held that GNC erred when it calculated the plaintiffs’ overtime premiums—that is, the amount to which they were entitled on top of their regular rates—by multiplying the respective regular rates by 1.5 and then by the number of overtime hours worked. 2017 WL 6594059, *17, 19.

In a cogent dissent, Judge Solano explained that the majority’s interpretation of the PMWA incorrectly conflates two distinct concepts: total overtime *pay* and the proper overtime *premium*. As Judge Solano explained, because the regular rate for nonexempt, salaried employees equals total compensation divided by total hours worked, an employer has already paid a nonexempt, salaried employee his or her “regular rate” for all hours worked—even for hours the employee worked over 40 in a week. The majority thus incorrectly interpreted the statute as requiring that an employee’s pay for overtime hours be “**1 1/2 times higher** than the employee’s regular rate, rather than an amount that is **equal to 1 1/2 times** the regular rate.” 2017 WL 6594059, *21-24 (Solano, J., concurring in part, dissenting in part) (emphasis in original).

Although many Pennsylvania employers have already conformed their practices to this quirk of Pennsylvania state law, *Chevalier* represents the first Pennsylvania Superior Court opinion on the issue. Pennsylvania employers who still advocate for use of the half-time premium must now be prepared to take the issue to the Pennsylvania Supreme Court.

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