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Williams v. General Nutrition Centers, Inc.

as actual, straight time pay.¹¹ The wage order’s command to use a divide by usual hours method therefore precludes use of the fluctuating method’s divide by actual hours method, except, of course, when an employee’s actual hours match his usual hours.

IV

In sum, we conclude that, although Connecticut’s wage laws do not preclude use of the fluctuating method, the plain meaning of the text in the wage order does.

We answer the certified question, “No.”

No costs shall be taxed in this court to any party.

In this opinion the other justices concurred.

¹¹ Here is an illustration of this calculation. Suppose an employee who usually works forty hours per week actually worked fifty hours in a week, and earned \$400 base pay, plus an additional \$100 in commissions, for a total weekly pay of \$500. In this scenario, the employee’s regular hourly rate for the purpose of calculating overtime is \$12.50 per hour (\$500/40 usual hours). This differs from his actual rate of pay, which was \$10 per hour (\$500/50 actual hours). The employee must be compensated at least \$18.75 for each overtime hour worked (\$12.50 x 1.5). Because the employer has already paid the employee at a rate of \$10 for each hour worked, including overtime hours, the employee needs an additional \$8.75 for each overtime hour to bring him to \$18.75 per hour for each overtime hour. His additional overtime pay is \$87.50 (\$8.75 x 10 hours of overtime).

This illustration assumes that the employee’s base pay and commissions are compensation for the full straight time pay he is entitled to receive for all hours worked. If the employee works more hours in the week than he receives straight time compensation for—according to the employee’s compensation arrangement—then the employer must first calculate the employee’s correct amount of straight time pay for all hours worked. The employer then uses the employee’s correct total pay for the week to calculate the employee’s rate of overtime pay under the wage order.

In the present case, the plaintiffs claim that their base pay is compensation for only a forty hour work week, meaning that they are entitled to additional base pay for all hours worked over forty hours. This claim presents an issue of fact that the plaintiffs must resolve in the District Court, not this court on a certified question of law.

NOTE: This page (326 Conn. 667) is in replacement of the same numbered page that appears in the Connecticut Law Journal of 22 August 2017.