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[California Court of Appeal Issues Favorable Decision Allowing For Explicit Mutual Wage Agreements For Non-Exempt Employees](#)

On February 7, 2011, the California Court of Appeal in *Arechiga v. Dolores Press, Inc.*, ___ Cal. Rptr. 3d ___, 2011 WL 359350 (Cal. App. 2nd Dist., Feb. 7, 2011) ruled that an employer and employee may enter into an explicit wage agreement under which a non-exempt employee may receive a guaranteed fixed salary for all work (including overtime hours) so long as the employer pays the employee for all overtime wages at the correct premium rate.

In *Arechiga*, the employee worked 66 hours per week and received a set salary of \$880.00 per week. The employer claimed that it had entered into an explicit wage agreement with the plaintiff under which the employee's fixed salary of \$880.00 compensated him for both his regular and overtime work based on a regularly hourly wage of \$11.14 and an hourly overtime wage of \$16.71 (\$11.14 x 1.5). The employee argued that his salary of \$880.00 compensated him only for a regular 40-hour work-week at an imputed base pay of \$22 per hour (\$880 / 40 hours), and did not include his regularly scheduled 26 hours of overtime. California Labor Code section 515(d) provides that "[f]or the purpose of computing the overtime rate of compensation required to be paid to a non-exempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary." Thus, according to the employee, the employer owed him overtime pay equal to 1.5 times his hourly based pay for his regularly scheduled 26 hours of weekly overtime (26 hours x \$33.00 per hour (\$22.00 x 1.5) = \$858.00 per week in back overtime). The trial court rejected the employee's assertion that Section 515(d) prohibited explicit mutual wage agreements and held that the employee was not entitled to recover further overtime pay. The plaintiff appealed.

The Court of Appeals agreed with the trial court's application of the explicit wage agreement doctrine, stating "Arechiga cites no case law supporting his assertion that Labor Code section 515, subdivision (d) abolished explicit mutual wage agreements," which were authorized under case law prior to the enactment of AB 60 (which reinstated overtime for all hours worked in excess of 8 in a day for California's non-exempt employees). The Court noted that a Judicial Council of California Civil Jury Instructions still in effect and multiple federal cases post-AB 60 continue to acknowledge the viability of explicit mutual wage agreements. The Court also rejected the interpretation set forth in the Divisions of Labor Standards Enforcement (DLSE) manual that explicit wage agreements are "no longer allowed as a result of specific language adopted by the Legislature at Labor Code § 515(d)." The Court reaffirmed that the DLSE pronouncements unsupported by other binding authority are not entitled to any deference at all. Because there was sufficient evidence in the record to establish the employer's contention that the parties agreed to a base rate of \$11.14 per hour and the \$880.00 weekly salary fully compensated the employee for all hours of overtime worked, the Court of Appeal upheld the trial court's ruling for the employer.

To take advantage of this ruling, employers need to ensure that they have written wage agreements with employees that clearly and unambiguously explain the components of the employee's pay. Failure to have mutual wage agreements that explicitly lay out the terms and meet the test of this new case can result in significant potential liability for employers. Prudent employers should consult with experienced labor counsel to ensure that their wage agreements are enforceable.

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