

Sick Leave Buy-Back must be Included in Calculation of “Regular Rate” for Overtime

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A city allowed employees who had accumulated a minimum amount of unused sick leave to sell it back to the city. The city did not, however, include buy-back payments when determining the regular rate of pay for purposes of calculating overtime pay. Under the Fair Labor Standards Act (FLSA), overtime hours must be compensated at a rate not less than 1.5 times the “regular rate” at which an employee is paid. The term “regular rate” includes “all remuneration paid” to an employee, with a few exceptions. The U.S. Courts of Appeals for the Sixth and Eighth Circuits are split on whether a sick leave buy-back payment must be included within an employee’s regular rate for overtime purposes. Noting the split, the U.S. Court of Appeals for the Tenth Circuit agreed with the Eighth Circuit and the U.S. Department of Labor in holding that such a payment must be included within the regular rate calculation. In so doing, the court stated that sick leave buy-backs represent compensation for additional service or value received by the employer and are analogous to attendance bonuses. Consequently, such payments must be included within the regular rate calculation. Interestingly, in the same opinion, the court held that vacation buy-backs do not need to be included within the regular rate calculation. Ultimately, this case demonstrates the complexities inherent in complying with wage and hour laws and that employers must carefully consider how the payment of bonuses and other forms of additional compensation impact the calculation of overtime payments to employees.

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