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Illinois Supreme Court Issues Important Decision Concerning Overtime Pay and Damages Under the Illinois Minimum Wage Law

By James P. Looby and Michael D. Considine

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On January 24, 2025, the Illinois Supreme Court issued an important decision in *Mercado v. S&C Electric Company* regarding the exclusion of performance-based compensation from the regular rate of pay under the Illinois Minimum Wage Law (IMWL) and whether the IMWL's statutory damages apply even if an employer makes belated payments to account for prior wage underpayments.

In *Mercado*, the plaintiffs filed a class action complaint in the Circuit Court of Cook County, Illinois, on behalf of themselves and other alleged similarly situated S&C Electric Company employees. The plaintiffs alleged that S&C underpaid them for overtime hours worked because it incorrectly excluded certain performance-based compensation from their regular rate of pay. The payments at issue ranged from approximately $100 to $900, and the plaintiffs alleged that they were made to recognize the plaintiffs' satisfaction of seniority goals, and certain performance and safety metrics.

S&C moved to dismiss the complaint, arguing that the payments were lawfully excluded from the regular rate of pay pursuant to Ill. Admin. Code tit. 56, § 210.410(a), which provides that an employer can exclude from the regular rate "sums paid as gifts such as those made at holidays or other amounts that are not measured by or dependent on hours worked." S&C further argued that, even if the plaintiffs had been initially underpaid, S&C later made adjusted payments to the plaintiffs that, according to S&C, mooted the plaintiffs' claim for statutory damages under 80 ILCS 105/12(a).

The circuit court granted S&C's motion to dismiss. The court held that genuine issues of material fact existed as to whether the performance-based payments were lawfully excluded from the regular rate pursuant to Section 210.410(a). Nevertheless, the court granted S&C's motion on the ground that S&C's adjusted payments prevented the plaintiffs from sufficiently alleging that they were entitled to further relief under the IMWL. The appellate court affirmed the circuit court's rulings.

The Illinois Supreme Court agreed with the plaintiffs and reversed.

Of note, the Court first held that the exclusion provision in Section 240.410 encompasses "only actual gifts and similar payments"; it is not intended to exclude *all* amounts not measured by or depended on hours worked from the regular rate. The Court based its reasoning on the plain language of the regulation and by looking to the corresponding provision in the federal Fair Labor Standards Act (FLSA), 29 U.S.C. § 207(e)(1)—and federal case law interpreting it—which permits excluding a bonus from an employee's regular rate calculation *only* if it is "actually a gift or in the nature of a gift." 29 C.F.R. § 778.212(b). The Court explained, "There is no indication in the [IMWL] or its attendant regulations that the [Illinois Department of Labor] intended for the gift exclusion to have a different meaning in the state context than in the federal context." Accordingly, because the plaintiffs "alleged that the performance bonuses were not gifts but compensation paid . . . for their services performed," the Court held that they sufficiently alleged a regular rate of pay violation under the IMWL.

The Court also held that S&C's subsequent, adjusted payments neither relieved it of liability under the IMWL nor precluded the imposition of statutory damages pursuant to Section 105/12(a). As the Court explained, an employee's IMWL claim accrues on "the date of payment"—i.e., the date that the employee should have been paid the wages legally owed; thus, an employer does not automatically avoid statutory damages under the IMWL by belatedly paying wages before a lawsuit has been filed. The Court reasoned that finding otherwise would be contrary to the plain language of Section 105/12(a), which provides for the monthly accrual of interest on underpaid wages and a three-year statute of limitations, and would "rob the statute of its deterrent effects." Accordingly, because S&C's adjusted payments did not account for monthly interest, treble damages, or attorney's fees and costs, the Court held that the plaintiffs sufficiently alleged they were entitled to additional relief under the IMWL.

In light of *Mercado* and other recent decisions addressing unpaid overtime claims, employers are encouraged to review their pay policies and practices with counsel in relation to both federal and state law.

If you have any questions about the topics discussed in this article, please contact **James P. Looby** at jlooby@vedderprice.com, **Michael D. Considine** at mconsidine@vedderprice.com, or any Vedder Price attorney with whom you have worked.