Non-Agricultural Employers May Use Workweek Averaging to Satisfy State Minimum Wage Obligations in Washington

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The Washington Supreme Court has confirmed that non-agricultural employers may use a workweek averaging methodology to satisfy the Washington Minimum Wage Act. *Sampson et al. v. Knight Transportation Inc. et al.,* No. 96264-2 (Sept. 5, 2019). In other words, non-agricultural employers can satisfy their state minimum wage obligations by showing that an employee's total wages for a workweek, when divided by the total hours worked during that week, results in a figure that is equal to or greater than the state minimum wage.

Workweek averaging is a well-accepted concept as a matter of federal law. It also had been a long-accepted practice in Washington in both the agricultural and non-agricultural contexts. However, an employer's ability to use that methodology to satisfy its minimum wage obligation in a non-agricultural setting was recently thrown into question as a result of the Washington Supreme Court opinion in *Carranza v. Dovex Fruit Co.,* 190 Wn.2d 612 (2018). In *Carranza,* the Court held that workweek averaging was not permitted in an agricultural setting. Instead, the Court ruled that employers must pay their employees at least the minimum wage for each hour worked. This meant that employers who paid their employees on a piece rate basis, for example, by the amount of fruit that was picked, had to separately and hourly pay their employees for work that was not directly related to the picking of fruit (*e.g.,* traveling between orchards, attending meetings, and storing and maintaining equipment and materials).

In *Sampson*, the Court considered a certified question from the U.S. District Court for the Western District of Washington: "Does the Washington Minimum Wage Act require non-agricultural employers to pay their piece-rate employees per hour for time spent performing activities outside of piece-rate work?" Essentially, the Court was tasked with determining whether the rule established by *Carranza* in an agricultural setting would be applied to non-agricultural employers. In a 6-3 decision, the *Sampson* Court responded in the negative, and affirmed the validity of workweek averaging as set forth in WAC 296-126-021.

While *Sampson* arose in a transportation context — involving truck drivers who were paid by the mile — its application extends well beyond the specifics of that industry and provides relief to all non-agricultural employers who pay their employees on a piece rate or commission basis.

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