

# Recent Decision on Nondiscretionary Performance Bonuses in Pay Calculations Has Wide-Ranging Implications for Illinois Employers

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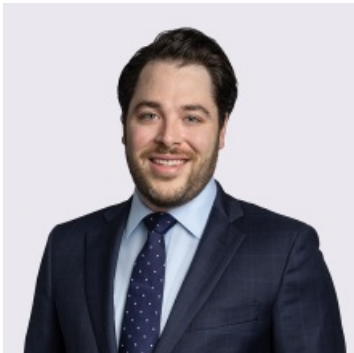
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## Meet the Authors



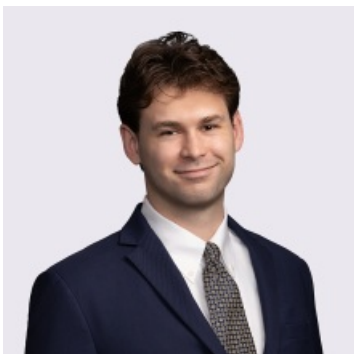
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## Takeaways

- The Illinois high court ruled in *Mercado* that state law requires that overtime calculations include performance bonuses even when the nondiscretionary bonuses, as in this case, were not dependent on hours worked.
- The Court noted the Illinois Minimum Wage Law is in line with the Fair Labor Standards Act on this issue and federal regulations support its holding.
- Determining whether to include bonuses in the regular rate for purposes of calculating overtime pay can be challenging and costly — Illinois employers face steep penalties if overtime is not properly calculated.

## Related link

- [\*Mercado v. S&C Elec. Co.\* \(opinion\)](#)

## Article

In Illinois, nondiscretionary “performance bonuses,” such as bonuses paid in recognition of employees satisfying certain performance and safety metrics and seniority goals, must be factored into employees’ regular rate of pay when calculating overtime wages, even when those bonuses are not directly tied to the number of hours worked, according to the Illinois Supreme Court’s recent decision in [\*Mercado v. S&C Elec. Co.\*, 2025 IL 129526 \(2025\)](#).

## Background

The employer routinely gave performance bonuses to its non-exempt hourly-paid factory workers. The bonuses were identified as “KPI Incentive,” “MIS bonus,” “Success sharing,” or “Seniority award,” among other descriptors, on employees’ pay stubs. The employer did not factor these bonuses into the employees’ regular rate of pay for purposes of calculating their overtime pay (which, under the Illinois Minimum Wage Law, is one and one-half an employee’s regular rate of pay). It cited the exclusion from the regular rate for “[s]ums paid as gifts such as those made at holidays or other amounts that are not measured by or dependent on hours worked” from the definition of “regular rate.” 56 Ill. Adm. Code 210.410(a).

## Court Decision

The Illinois Supreme Court held that the Minimum Wage Law provision provides only one exemption: sums paid as gifts (including gifts “made at holidays” and gifts in the form of “other amounts that are not measured by or dependent on hours worked”).

Because the performance bonuses were not “gifts,” the Court ruled those bonuses were not

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exempted under this provision, even though the bonuses were not dependent on hours worked.

The Court did not address a separate exclusion under Illinois law for discretionary bonuses “paid in recognition of services performed which are determined at the sole discretion of the employer.”

### Implications

This decision has wide-ranging implications for employers in Illinois. Organizations should review all forms of compensation paid to their non-exempt employees to ensure that overtime pay is properly calculated. This is especially important given the Illinois Minimum Wage Law’s steep penalties for underpayment of wages. A prevailing plaintiff may recover triple the amount of the unpaid overtime wages plus five percent of the amount of any such underpayments for each month they remain unpaid, as well as attorneys’ fees and costs.

Jackson Lewis attorneys are available to answer questions about the potential impact of the Court’s decision and help develop effective wage and hour policies.

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