



Employment Law Note

October 2019

A Tale of Trucks and Apples: Some Clarity Comes to Washington's Wage Laws



By **Darren Feider**, dfeider@sebrisbusto.com

In Washington, wage and hour laws often impose technical and unforeseen obligations on employers. Long-term practices can become unlawful overnight with no warning. Happily, however, the Washington Supreme Court recently resolved a contested issue in employers' favor. In *Sampson v. Knight Transportation Inc.* (September 5, 2019), the Court held that trucking companies are not liable for hours worked when truck drivers spend time on non-driving functions.

The decision impacts far more than just truck drivers.

To understand the significance of *Sampson*, you need to understand how truck drivers and fruit pickers are paid. In the trucking industry, companies often pay their drivers based on the number of miles driven, which incentivizes the truck drivers to make productive use of their day. This practice, which is akin to payment on a "piece rate," is permissible under Washington and federal law. In the agriculture industry, fruit pickers are likewise often paid by the "piece," e.g., per pound of fruit picked. This long-accepted practice was called into question last year as a result of the Washington Supreme Court's decision in *Carranza v. Dovex Fruit Co.*, 190 Wn.2d 612 (2018), a case involving fruit workers. In *Carranza*, the Court ruled that in the agricultural industry, employers must pay their employees at least the minimum wage for every hour worked. This meant that employers who paid their employees on a piece rate basis also had to separately pay employees for work not directly

related to picking the fruit (e.g., attending meetings, traveling between locations, and maintaining equipment). A similar situation arises with truck drivers who do more than just drive their trucks—they inspect their trucks before and after their shifts, fill out paperwork, fuel their trucks, wait during loading and unloading times, secure and/or tarp their loads, become stuck in traffic jams, and can be detained by shippers, warehouses or port authorities. Following *Carranza*, several law firms asserted class action wage claims for the non-driving time and characterized the unpaid time as "on-duty, not-driving time." They argued such time is compensable under *Carranza* because the Washington Minimum Wage Act mandates that employees be compensated for all hours worked, and since the drivers were not paid for the non-driving time, they were owed additional compensation.

The drivers, however, were unsuccessful. The *Sampson* Court held that non-agricultural employers like trucking companies are not required to compensate their piece-rate employees per hour for time spent performing activities outside of piece-rate work as long as the total wages paid for the week do not fall below minimum wage for each hour worked. Instead, non-agricultural employers may utilize what is called "workweek averaging," which means they can divide the employee's total wages earned in a week by the total hours worked in order to determine if minimum wage has been paid. So long as the total compensation for the week it is more than the minimum wage on a per hour average, the employer

owes nothing additional for the non-driving time. The *Sampson* Court noted that a different result would have occurred in the agricultural context where the Department of Labor & Industries requires employers to pay their employees for all hours worked and cannot employ workweek averaging.

If this seems a bit confusing, you should not feel bad. As noted, Washington's wage and hour laws are a complex web, that is often tangled further by judicial decisions. The lesson from *Sampson v. Knight Transportation* is that piece-rate compensation remains a viable method to compensate outside the agricultural industry. Non-agricultural employers using the piece-rate payment system should clearly communicate to their employees that all tasks that are subsumed into the piece-rate compensation basis. However, agricultural employers should be careful to provide additional compensation for non-piece-rate tasks to avoid potential wage claims. Please let us know if you have questions about piece-rate or other compensation methods.

For more information about this month's Employment Law Note
contact us at [425-454-4233](tel:425-454-4233)

