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Client Alert

Colorado Updates – Holiday Overtime and Incentive Pay; Additional Protections for Employees Signing Training Repayment Agreement Provisions

COLORADO REQUIRES THAT HOLIDAY INCENTIVE PAY BE INCLUDED IN CALCULATING OVERTIME

WHAT'S NEW: In September 2024, the Colorado Supreme Court ruled in *Hamilton v. Amazon.com Services LLC* that employers must include holiday incentive pay in the "regular rate of pay" calculation for overtime.

WHAT IT MEANS: When an employee gets paid for a holiday but does not work the holiday, the employer does not have to consider this pay when calculating overtime. That is because Colorado regulations expressly permit an employer to exclude pay for *non-work hours* from the regular rate.

However, in *Hamilton*, the Court distinguishes holiday pay for non-work hours from holiday incentive pay, which is extra pay for time actually worked on the holiday.

The court determined that holiday incentive pay is essentially the same as a shift differential (i.e., a higher wage rate paid for an employee to work a particular shift). Colorado Overtime and Minimum Pay Standards Order, Rule 1.8.1. includes shift differentials in the types of pay that should be factored in the regular rate calculation.

WHAT EMPLOYERS SHOULD DO: Colorado employers should immediately review their policies and practices as they pertain to calculating and paying overtime to ensure holiday incentive pay that is extra pay for time actually worked is included in determining an employee's regular rate of pay. In most cases, this will increase an employee's overall regular rate of pay in for overtime calculations.

COLORADO ADDS PROTECTIONS FOR EMPLOYEES SIGNING TRAINING REPAYMENT AGREMENT PROVISIONS

WHAT'S NEW: On May 31, 2024, Colorado Governor Jared Polis signed the Attorney *General Restrictive Employment Agreements* law, which became effective **August 7, 2024**.

WHY IT MATTERS: The new law adds protections for employees who sign agreements which include "training repayment agreement provisions" (TRAPs). TRAPs generally require departing employees to repay the costs of specialized training paid by the employer.

- The law still permits employers to recover the expense of educating and training from a worker where the training is deemed to be specialized on the job training. However, the employer's ability to recover costs is limited to the reasonable costs of the training and decreases over two years of the employment term, proportional to the number of months since the training.

- An employer is prohibited from presenting an employee with a TRAP that is not compliant with the law. The law provides the Attorney General, or an aggrieved employee, the ability to recover up to three times the amount of the attempted recovery by the employer, plus a $5,000 penalty and attorneys' fees and costs.

WHAT EMPLOYERS SHOULD DO: Employers who wish to continue using TRAPs must review this law carefully to ensure their agreements are compliant and consider discussing with employment counsel before implementing TRAPs in offer letters or employment agreements.

Please reach out to your Engage Human Resources Partner if you have any questions concerning this alert or other H.R.-related matters.