

Employer Need Not Count Overtime Twice In Bonus Calculation

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[*Lemm v. Ecolab Inc.*, 2023 WL 21795 \(Cal. Ct. App. 2023\)](#)

Stephen Lemm, a route sales manager, brought a PAGA action against his employer, Ecolab, Inc., alleging that Ecolab improperly calculated nondiscretionary bonuses. Pursuant to Ecolab's incentive plan, an employee could receive a higher monthly bonus based on performance as a percent of gross wages. For the purpose of calculating the bonus, gross wages included straight time, overtime, and double time wages. Ecolab relied on a federal regulation that specifically applies to percentage bonuses and permitted Ecolab's calculation method. Lemm argued that the DLSE manual requires that a nondiscretionary bonus be incorporated into the calculation of the regular rate of pay, which would in turn affect overtime calculations. Further, Lemm argued, because California law favors an interpretation that is more protective of workers, Ecolab could not rely on a less protective federal regulation. The trial court granted summary judgment for Ecolab and the Court of Appeal affirmed, holding that because Ecolab's calculation was already based on overtime, requiring Ecolab to again calculate based on overtime would require them to pay "overtime on overtime."

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