

# Employer Bulletin

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## AVOIDANCE OF UNLAWFUL BONUS FORMULAS

A California Appellate Court decision has clarified aspects of a bonus calculation formula which are unlawful. A bonus plan is typically used to incentivize employees to work hard, be productive and help maximize company profits. With that goal in mind, employers sometimes create a profit based bonus program which takes into account not only revenues, but also company expenses, such as cash and merchandise shortages, merchandise breakage and workers' compensation costs.

*Ralphs Grocery Company v. Superior Court* has held that a calculation of a profit based bonus which includes a charge for workers' compensation costs constitutes a violation of Labor Code Section 3751 which prohibits employers from indirectly holding its employees accountable for workers' compensation costs. The prohibition applies regardless of whether the employee entitled to a bonus is exempt or non-exempt.

The Court also held that as to non-exempt employees, a bonus calculation which includes cash and merchandise shortages is a violation of California Industrial Wage Commission Wage Orders which prohibit deductions from wages for cash or merchandise shortages, absent gross negligence or willful misconduct. The Court held that the bonus constituted "wages" and, therefore, the bonus calculation formula was unlawful.

However, the Court held that since the Wage Order's prohibition against a deduction from wages for cash or merchandise shortages only applies to non-exempt employees, a bonus calculation accounting for cash and merchandise shortages is lawful as applied to exempt employees.

**WHAT YOU SHOULD DO:** Under no circumstances should a bonus formula include in its calculation any aspect of workers' compensation costs. As to profit based bonus formulas applicable to non-exempt employees, the calculation should not take into account cash or merchandise shortages, or merchandise breakage.

## EMPLOYEE HANDBOOK UPDATE?

As you are all well aware, the new workers' compensation laws have many new material changes. Some Employee Handbooks go into great detail about an employee's workers' compensation rights which may need to be updated.

**WHAT YOU SHOULD DO:** Review your Employee Handbook to be sure that its discussion of workers' compensation is consistent with current law.

For additional information about these matters please contact [Leonard Brazil](#).

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