

YOUNG V. STATE OF OREGON
(Overtime for State Employees)

1.
DESCRIPTION OF THE CASE

The case arose because the plaintiff, who was an employee of the State of Oregon and was exempt from overtime as a “white collar” employee, claimed that because of the amendments that took effect in June of 1995 to the State wage and overtime statutes, ORS 279.340 and ORS 279.342, virtually all of the State “white collar” employees were eligible for overtime from that date until August of 1997 when the statute was amended.

2.
HISTORY OF THE CASE

In February of 1997 the State was presented with a notification of a class action lawsuit on behalf of David Young and all other affected State employees. The Oregon Rules of Civil Procedure require this notification in order to give a potential defendant to a class action lawsuit thirty days to enter into a settlement agreement and avoid litigation. The State declined to do so.

On March 20, 1997 the lawsuit was filed in Marion Circuit Court. The parties agreed to resolve the State’s liability issue before the case was certified as a class action lawsuit and before the expense of notifying plaintiffs of the case’s existence.

In September 1997, the parties argued that issue to the Court and the Court ruled that the State did not violate the statute. We appealed that decision.

In June 1999, the Court of Appeals ruled that the State was, indeed, liable for its employees’ overtime. *Young v. State of Oregon*, 161 Or App 32 (1999).

The State filed a petition asking the Oregon Supreme Court to review the Court of Appeals’ decision. In October 1999, The Supreme Court denied the petition. The State filed another petition, asking the Supreme Court to reconsider its denial. In December 1999, again, the Supreme Court denied the State’s petition. The case was remanded back to Marion County Circuit Court for resolution.

On February 22, 2000, the Marion County Circuit Court heard an initial status conference on the case. By then the Assistant Attorney General on behalf of the State and John Hoag, had agreed to a procedure that had been proposed by the State to allow each claimant to fill out a questionnaire and submit a claim to a neutral party to process. At that time, we agreed on the University of Oregon Research Survey Laboratory (OSRL) to process the questionnaires. The questionnaire was to be reduced to an affidavit to be signed by the individual claimant. The State would then have 45 days to accept or challenge the claim as made. If we could not negotiate a settlement to each claim, then it would proceed to

mediation if requested by the State, or to arbitration. The State agreed to pay for the costs of this procedure.

After that the parties got into substantial disagreement as to the validity of the questionnaire and the details of how the process was going to be administered. Suffice it to say, that matters did not go smoothly, and the resulting questionnaire confused many plaintiffs.

In the meantime, the State obtained a ruling from Judge Lipscomb that the payment was going to be at the “FLSA half-time rate for a fluctuating work week,” as opposed to time and one-half. The State also obtained a ruling that prejudgment interest would not be paid in the case, and lastly, that the one month severance pay, or penalty pay, for not being paid for this overtime at termination of employment would only go to those plaintiffs who retired after January 28, 2000.

Based upon these rulings, we filed new appeals on the method of payment, prejudgment interest, and how penalty pay was to be applied. Those issues were argued at the Court of Appeals in May 2002.

Also, during 2001 – 2002 plaintiffs submitted claims which have all now been finally resolved, and all 1,765 plaintiffs have been paid.

In September of 2004 the Court of Appeals affirmed the ruling that the method of overtime calculated is by using the “FLSA half-time” rate, and denied prejudgment interest based on an Oregon Supreme Court decision that came out five months after this case was argued in the Court of Appeals. However, the Court did reverse the Court of Appeals decision in part on the penalty pay issue and ruled that any employee who terminated employment with the State on or after June 2, 1999 and was not paid the overtime that was due at or before the date of termination is entitled to penalty pay (with a few statutory exceptions). The fact that it took the Court over two years to decide the case indicates that the Court struggled with the ruling. *Young v. State* 195 Or App 31 (2004).

3.

OREGON SUPREME COURT REVERSES COURT OF APPEALS

In February 2005 the Oregon Supreme Court accepted review of the case. This represented an important hurdle as about only 5% of the Petitions for Review that are filed are accepted.

In 2006, the Oregon Supreme Court reversed the Court of Appeals Decision. *Young v. State*, 341 Or 401 (2006). In that case, the Court declared that the proper calculation of damages was using time and one half and not the so called fluctuating workweek of the “half-time rate.” In addition, the Court ruled that all plaintiffs who terminated their employment with the State and had not been paid at the time and one-half should receive penalty pay.

4.

CIRCUIT COURT RESOLUTION AND MORE LITIGATION

As the result of that reversal, the case was remanded back to the Circuit Court, and in 2006 and 2007 – 1,749 plaintiffs were paid for their remaining overtime they were due and 1,182 were paid for penalty pay. As described in this article, more than 10 years of highly complex, contentious litigation, 1,749 state employees were paid approximately \$23 million in damages.

We argued that Plaintiffs were due interest on their judgments for overtime from the date of first judgment until the date of the second judgment. The interest should have been paid on the amounts paid on the second judgment for the overtime claims because of the fact that the plaintiffs should have received post judgment interest. However, the Circuit Court ruled that the State of Oregon was immune from not only prejudgment interest but post judgment interest.

5.

THE COURT OF APPEALS RULES THAT THE STATE IS IMMUNE FROM POST JUDGMENT INTEREST

The case was again appealed to the Court of Appeals and argued in November of 2007. In July of 2008, the Court of Appeals ruled the State of Oregon was immune from post judgment interest because there was no law specifically stating that the State was liable for that interest. *Young v. State 221 OR APP 146 (2008)*

Again, a Petition for Review was filed with the Oregon Supreme Court.

6.

SUPREME COURT ACCEPTS REVIEW

The Supreme Court has agreed to accept the review on the issue of whether the State is liable for interest payments in this case. The order allowing review stated that the case would be on a tight schedule with our first brief due within 28 days. Each side can ask for one 14 day continuance for filing its brief. The case is set for Oral Argument on May 18, 2009 at 3:00 pm. The Court indicated that it would not change that date absent extraordinary circumstances.

Again, there are no time lines waiting for a Supreme Court decision after Oral Argument, but one could be expected around the end of 2009.

7.

SUPREME COURT RULES FOR PLAINTIFFS

On July 16, 2009, the Supreme Court ruled that Plaintiffs were entitled for interest from the date of the final judgment from the first round of payoffs in 2000-2001 until Plaintiffs were finally compensated in 2006 and 2007. 346 Or 507, 212 P3rd 1258.

8.

DISAGREEMENTS IN CIRCUIT COURT REGARDING INTEREST PAYMENT

One would have hoped that the Supreme Court decision would have given us the basis for ending the case. However, the State claimed it only owed the Plaintiffs interest from the final judgment in 2003 until when the Plaintiffs were paid the correct amount of overtime in 2006 and 2007. The State claimed it did not owe interest from 2006-2007 until Plaintiffs were paid. Plaintiffs who had terminated their employment after receiving their overtime payments in 2006-2007 also claimed they were entitled to penalty pay.

These matters were finally argued in front of Judge Abernathy who with the comment that “the Plaintiffs have been milking the case for too long” ruled for the State on both issues. With that the case the Plaintiffs had no option but to appeal again to the Oregon Court of Appeals over those issues.

Meanwhile while with interest payments a number of Plaintiffs decided it was no longer in their interest to continue with the case. However, finally 1,637 Plaintiffs have been paid by the State of Oregon a gross amount of over \$4 million dollars.

9.

PLAINTIFFS APPEAL TO THE OREGON COURT OF APPEALS

The appeal to the Court of Appeals over the interest of interest payments and penalty pay should have been relatively easy. However, the Oregon Legislature had recently passed statutes requiring that unless the Chief Justice waived the filing fee that every Plaintiff would have had to pay a filing fee in order for the appeal to go forward for them. Initially, 483 Plaintiffs signed up to have the appeal heard in this case with a filing fee of \$212 from each Plaintiff. A check was sent into the court for over \$100,000 for the appeal, but luckily Chief Justice DeMuniz entered an order requiring only six Plaintiffs to have to pay the fee. Given this order our firm again advanced filing fees, and the case is once more on appeal.