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ATTORNEY GENERAL RAOUL, DEPARTMENT OF LABOR FILE BRIEF TO PROTECT WORKERS' RIGHTS TO RECOVER UNPAID OVERTIME WAGES AND PENALTIES

Brief Urges Illinois Appellate Court to Overturn Flawed Decision that Prevents Workers from Recovering Lost Overtime Wages and Penalties

Chicago — Attorney General Kwame Raoul and the Illinois Department of Labor (IDOL) are urging the Illinois Appellate Court to overturn a circuit court's order barring employees of a Chicago manufacturing company from recovering overtime wages and penalty fees they argue should have been paid. Raoul, along with the IDOL, filed an amicus brief in *Mercado v. S&C Electric Company (S&C)* to ensure that the Illinois Minimum Wage Law protects employees' right to earn fair compensation for overtime hours worked, as well as their right to recover lost wages and penalties in court.

"Employees have a right to be fairly compensated for all the hours they work. In the event that their employer violates Illinois' Minimum Wage Law, employees also have a right to recover penalties, in addition to lost overtime wages," Raoul said. "I am committed to protecting Illinois workers and ensuring that employers that violate the law are accountable to their employees."

"The Illinois Department of Labor is committed to protecting the rights of workers in Illinois to overtime pay and their ability to enforce that right," said IDOL Acting Director Jane Flanagan.

The lawsuit was filed by hourly factory assembly workers who state that S&C, a Chicago manufacturing company, pays workers in part by offering bonus payments tied to metrics, such as the quality and quantity of their work, in addition to hourly wages. In the lawsuit, the employees allege S&C did not include the bonus payments when calculating their baseline pay rate, meaning that the workers were paid less in overtime than they were owed. Although S&C ultimately paid the back wages, the lawsuit alleges the company did not pay any of the penalties required by the Minimum Wage Law for unlawful underpayments.

A trial judge dismissed the lawsuit on the grounds that because S&C did end up paying the employees' back wages, it was not required to pay any penalties. The circuit court also held that S&C likely would not have needed to include the bonus payments when calculating the baseline rate in the first place. The court reasoned that an IDOL regulation allows employers to exclude "gifts," to employees, and the bonuses in question qualified as such.

[The amicus brief](#) filed by Attorney General Raoul and the IDOL argues that both circuit court determinations are incorrect. Raoul's brief explains that employers are not permitted to adopt a "wait and see" approach to paying overtime, offering back wages only when employees threaten lawsuits. Rather, Raoul and the IDOL state that employers must pay all the overtime owed to employees in a timely manner, or pay the penalties required by law. The brief also argues that employers like S&C generally must include all employee compensation – not just hourly compensation – when calculating the baseline pay rate. According to Raoul and the IDOL, an employer cannot pay workers in non-hourly wages and then claim the payment is a gift.

Today's announcement builds on Attorney General Raoul's effort to fight unlawful employment practices. In January 2020, a law initiated by Raoul went into effect, formally establishing the Worker Protection Unit within the Attorney General's Office to better protect Illinois workers from wage theft and other unlawful employment practices.

Attorney General Raoul encourages workers who have concerns about wage and hour violations or potentially unsafe working conditions to call his Workplace Rights Hotline at 1-844-740-5076 or to [file a complaint online](#).