

Washington Supreme Court rules farmworkers must be paid separately for rest breaks

By Shelby Rowe
Skagit Valley Herald
July 16, 2015

The Washington Supreme Court ruled Thursday that farmworkers must be paid separately for 10-minute rest breaks allowed by state law during each four-hour period of employment.

Sakuma Bros. Farm said in a written statement that the company is already doing so with the new pay structure put in place this year.

The case was originally filed as a class action lawsuit against Sakuma Bros. Farms by two farmworkers in 2013 when the company was paying workers on a piece-rate scale. A settlement was reached, but the state Supreme Court was asked to determine an agriculture employer's obligation to pay for breaks and how agriculture employers must calculate it.

The court found first that because of the wording of state law, pay for rest breaks must be paid separately from the piece rate.

On the second question, the court found that break time cannot be paid at a lower rate than the time the farm worker is working.

The ruling states:

"An all-inclusive piece rate compensates employees for rest breaks by deducting pay from the wages the employee has accumulated that day. Hourly employees do not finance their own rest breaks in this way, and requiring pieceworkers to do so strips the phrase 'on the employer's time' (in the law) of any practical meaning. That same language requires that rest breaks for pieceworkers be paid at least at the applicable minimum wage or the employee's regular rate, whichever is greater."

Sakuma changed its wage structure this year and pays a flat \$10 rate with production bonuses that kick in depending on how many pounds the worker picked.

Roger van Oosten, spokesman for Sakuma, said the breaks are paid based on the worker's average earnings that day.

The breaks are calculated by adding the total amount earned for picking, including any production bonuses, plus travel time or meeting time. The travel and meeting time is calculated on a \$10 per hour rate. Then the amount is divided by the number of hours worked.

"When we set it (the pay structure) up, the workers are paid for productive and non-productive time," van Oosten said. "It didn't seem fair for their breaks to be calculated on a \$10 rate because they're making more than \$10."

And indeed, the Supreme Court ruled Thursday that those breaks cannot be paid at a rate lower than what they are earning while working.

Danny Weeden, CEO of Sakuma, was unavailable for comment but provided a written statement.

“Today’s decision by the Washington State Supreme Court confirms that our current, active pay system goes above and beyond industry standards and is one of the most progressive in the state, if not the country,” Weeden said in the statement. “We will continue with our new pay schedule to the benefit of our magnificent team of hard-working harvest pickers. We have set ourselves on a path of being the best farm we can be. Today’s ruling acknowledges that we are doing things right.”

Familias Unidas por la Justicia is counting the ruling as win for farmworkers, but it’s just one step in the right direction, said Edgar Franks with Community to Community Development, which supports the union.

Familias Unidas por la Justicia is an independent union composed of those who say they are current and former Sakuma workers.

The group has been trying for several years to negotiate a contract with Sakuma.

Franks said he hasn’t heard any complaints from workers about not receiving breaks or feeling pressure to work through their breaks — a 10-minute rest stop every four hours.

He said the workers’ main concern is the overall pay scale. Workers want \$15 an hour for their work and would like to negotiate with Sakuma to get it, he said.

Some employees walked out on the job this month over the new pay scale Sakuma constructed.

Sakuma officials have said the new structure allows workers to earn up to \$33 an hour in bonuses, but workers contend the new system is confusing and fluctuates daily depending on the difficulty of the field they’re picking in.

“It’s too confusing for the workers,” Franks said. “That’s why farmworkers are asking for a flat \$15 an hour. It makes more sense to negotiate with the union and the workers instead of going to court over and over again.”

However, van Oosten has said the company has no plans to negotiate a new wage as it has already implemented a different system and feels the pay is fair.

The court ruling notes that Sakuma agreed to a settlement in the workers’ original case involving retroactive claims, but that the company did not agree to setting precedent for the future. Even so, the company made changes to its pay structure that clearly separates pay for break times. A copy of a worker’s pay stub obtained by the Skagit Valley Herald shows a line for each paid break a worker took during the week, how long the break was and how much pay was earned during it.

Attorney General Bob Ferguson supported the courts 9-0 ruling.

“I’m gratified that the Court unanimously upheld the view of the plaintiffs and my office in today’s decision supporting workers’ rights,” Ferguson said in a press release. “Paid

breaks for workers are a basic principle embodied in state law, and this decision ensures that some agricultural workers, who often perform difficult work for low pay, aren't denied this right arbitrarily, based solely on their compensation method."

Franks said the union is working to build a better agriculture system in Skagit County, and the ruling is a step in the right direction.

— *Reporter Shelby Rowe: 360-416-2112, srowe@skagitpublishing.com, Twitter: [@Shelby_SVH](https://twitter.com/Shelby_SVH), facebook.com/byshelbyrowe*