

**County of Placer v. Andrade (05/24/97 - 55 Cal.App.4<sup>th</sup> 1393, 64 Cal.Rptr.2d 739)**

Case addresses inclusion of bonus and overtime earnings in income for support. Trial court excluded a father's (Andrade) bonus and overtime earnings from his income for the purpose of determining his child support obligation. The appeals court reversed this judgment. It referred to Family Code § 4058 opining that overtime and bonuses are included in the definition of annual income.

At issue was whether Andrade's past earnings accurately reflected his prospective earnings. Andrade had earned bonus and overtime pay for the two and one-half year period preceding the support hearing. The trial court was unwilling to include this in calculating Andrade's income because the amount varied from month to month, and because it refused to "force" Andrade to work overtime.

The appeals court ruled:

- The trial court can not deduct predictable overtime and bonuses in determining Andrade's prospective earnings merely because they occur sporadically.
- The mechanism for calculating Andrade's net disposable income is a monthly average. (Family Code § 4060.)
- A determination must be made whether the bonuses and overtime are likely to reoccur.

Past bonus and overtime payments can be disregarded from the calculation for support only if a court determines that the person is unlikely to receive them in the future. That might occur because of changed employment conditions. However, such a change should be shown by admissible evidence.

A showing that a parent is unlikely to receive overtime might also be based upon evidence that the parent is no longer willing to accept voluntary overtime. If the parent voluntarily ceases to work overtime the trial court may then decide, in its discretion, whether to consider the parent's overtime as earning capacity.