ADVANCE SHEET HEADNOTE
September 9, 2024

2024 CO 60

No. 24SA12, *Hamilton v. Amazon.com Services LLC*—Holiday Incentive Pay—Regular Rate of Pay.

The supreme court accepted review of the following certified question of law from the Tenth Circuit Court of Appeals:

> Whether Colorado law includes or excludes holiday incentive pay from the calculation of "[r]egular rate of pay" under 7 Colo. Code Regs. § 1103-1:1, secs. 1.8 and 1.8.1.

(Alteration in original.)

The court now concludes that in accordance with the plain language of Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:1.8, 1.8.1 (2022), Colorado law includes holiday incentive pay in the calculation of the "regular rate of pay."

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 60

Supreme Court Case No. 24SA12
Certification of Question of Law
United States Court of Appeals for the Tenth Circuit Case No. 23-1082

Plaintiff-Appellant:

Dan Hamilton, individually and on behalf of all others similarly situated,

v.

Defendant-Appellee:

Amazon.com Services LLC, a Delaware limited liability company.

Question Answered
en banc
September 9, 2024

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JUSTICE GABRIEL delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ, JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 This case requires us to answer the following certified question of law from the Tenth Circuit Court of Appeals:

> Whether Colorado law includes or excludes holiday incentive pay from the calculation of "[r]egular rate of pay" under 7 Colo. Code Regs. § 1103-1:1, secs. 1.8 and 1.8.1.

(Alteration in original.)

¶2 We now conclude that in accordance with the plain language of the regulation, Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:1.8, 1.8.1 (2022), Colorado law includes holiday incentive pay in the calculation of the "regular rate of pay."

I. Facts and Procedural History

¶3 Dan Hamilton was employed by Amazon.com Services LLC ("Amazon") at an Amazon warehouse in Aurora. As part of Hamilton's employment, Amazon offered him, as pertinent here, both holiday pay and holiday incentive pay. Holiday pay entitled Hamilton to his regular pay rate (i.e., his hourly rate) on company holidays, such as New Year's Day and Labor Day, regardless of whether he actually worked on that day. If Hamilton worked on a designated company holiday, then Amazon offered him, in addition to holiday pay, holiday incentive pay, which compensated him at one and one-half times his regular hourly rate.

¶4 Colorado law requires Amazon to pay their employees overtime at a rate of one and one-half times the employee's "regular rate of pay" when, as pertinent here, the employee works more than forty hours per workweek. Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:4.1.1(A) (2022). "Regular rate of pay" is defined as "the hourly rate actually paid to employees for a standard, non-overtime workweek." Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:1.8 (2022) ("Rule 1.8").

¶5 In January 2022, Hamilton filed an individual and class action complaint against Amazon in Arapahoe County District Court. In this complaint, Hamilton alleged that, as to him, Amazon had violated the Colorado Wage Act ("CWA"), §§ 8-4-101 to -125, C.R.S. (2023), when, on three separate occasions, it did not properly pay him for overtime that he had worked during weeks in which he had also worked on a company holiday. In support of this argument, Hamilton referred to Amazon's holiday pay policies, which provided:

> Eligible employees are paid their regular pay rate on company holidays regardless of whether or not they work on the holiday. . . . Holiday hours are not considered "hours worked" and are not used in the calculation of overtime. Only hours that are actually worked on a company holiday are considered "hours worked" in the calculation of overtime pay.

¶6 Because, when paying time and a half, an employer must consider "all payments received for work completed," Hamilton argued that holiday incentive pay, which compensates employees for hours "actually worked on a company

holiday," must be included in the calculation of overtime pay. Thus, in Hamilton's view, his overtime pay should have been calculated after determining his regular rate of pay based on the total compensation paid to him (including holiday incentive pay) and then dividing that sum by the total hours worked. He asserted that because Amazon did not include his holiday incentive pay when it calculated his rate of pay for the three weeks at issue, Amazon had failed to pay him all of the overtime that he had earned during those weeks.

¶7 Hamilton further alleged that because Amazon's pay policies regarding holiday incentive pay and overtime compensation were uniform and allegedly impacted "at least hundreds if not thousands of employees," the district court should certify a class of all classes of United States non-exempt hourly employees who had worked more than forty hours at certain Amazon warehouses in Colorado during weeks in which they had worked on a company holiday.

¶8 After being served with Hamilton's complaint, Amazon removed the case to the United States District Court for the District of Colorado on the basis of diversity jurisdiction. It then moved to dismiss the complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6). In its motion, Amazon asserted that because (1) "Colorado's wage and hour regulations have clearly instructed . . . that holiday pay can be excluded from the regular rate" and (2) holiday incentive pay like that at issue was "clearly a type of holiday pay" (i.e., extra compensation provided for

work on a holiday), Colorado law did not require Amazon to include holiday incentive pay in the calculation of the regular rate of pay. Amazon perceived further support for this argument in the regulations effectuating the Federal Fair Labor Standards Act ("FLSA"), 29 C.F.R. § 778.203(c) (2020). Amazon interpreted these regulations to say that when an employer provides extra compensation at a premium rate of at least one and one-half times the rate paid for work on holidays, that compensation may be treated as an overtime premium and need not be included in the calculation of the employee's regular rate of pay. Amazon then argued that because (1) the exclusion of holiday incentive pay from the calculation of Hamilton's regular rate of pay was "proper" under federal law and (2) "Colorado law is completely devoid of any indication that different treatment would be required to comport with state wage and hour requirements," Hamilton's complaint failed to state a claim on which relief could be granted.

¶9 Hamilton opposed Amazon's motion to dismiss on several grounds.

¶10 First, he argued that Colorado law in this area is not like federal law and that Amazon was conflating "a premium rate offered for services performed [i.e., holiday incentive pay] with pay that is offered simply because it is a certain day on the calendar [i.e., holiday pay] . . . ." Although Hamilton recognized that "there is no debate that holiday pay should not be included in the regular rate of pay," he asserted that holiday incentive pay did not fall within the same category as

holiday pay because holiday pay is only for "*non-work* hours," Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:1.8.1 (2022) ("Rule 1.8.1") (emphasis added), whereas holiday incentive pay is compensation for hours actually worked.

¶11 Second, Hamilton asserted that because holiday incentive pay is a "shift differential" (defined as a situation in which "an employee receives a higher wage or rate because of undesirable hours or disagreeable work," *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446, 468–69 (1948)) and Colorado law provides that shift differentials are included in the calculation of the regular rate of pay, Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:1.8.1 (2022), Amazon had erred by not including holiday incentive pay in that calculation.

¶12 Finally, as to Amazon's claim that it had properly calculated his regular rate of pay under the FLSA, Hamilton argued that Colorado law is more protective than the FLSA and, thus, the FLSA did not apply to his overtime claim here.

¶13 While Amazon's motion to dismiss was pending before the federal district court, Hamilton filed motions (1) to certify his complaint as a class action under Fed. R. Civ. P. 23 and (2) to certify to this court the question of "whether a premium payment paid at the rate of time and a half of the worker's agreed upon rate for time worked on a holiday may be excluded from the calculation of the regular rate for overtime purposes under the [CWA] and its implementing regulations." Amazon opposed both motions.

¶14 After considering the parties' respective arguments, the federal district court granted Amazon's motion to dismiss. *Hamilton v. Amazon.com Servs. LLC*, No. 22-cv-00434-PAB-STV, 2023 WL 2375080, at *4 (D. Colo. Mar. 3, 2023). In so ruling, the court recognized that although the Colorado legislature sets the rate of overtime pay, it delegated to the director of the Division of Labor the authority to prescribe the conditions and rules governing overtime compensation. *Id.* at *2. The court noted that the Division of Labor then promulgated yearly wage orders that, as pertinent here, defined the regular rate of pay and described the types of pay that employers must include when calculating the regular rate of pay. *Id.*

¶15 The court thus looked to Colorado Minimum Wage Order ("COMPS Order") 38, the wage order then in effect. *Id.* at *3. Specifically, the court focused on Rule 1.8.1, which provided:

> The regular rate includes all compensation paid to an employee, including set hourly rates, shift differentials, minimum wage tip credits, non-discretionary bonuses, production bonuses, and commissions used for calculating hourly overtime rates for non-exempt employees. Business expenses, bona fide gifts, discretionary bonuses, employer investment contributions, vacation pay, *holiday pay*, sick leave, jury duty, *or other pay for non-work hours* may be excluded from regular rates.

(Emphases added); *see also Hamilton*, 2023 WL 2375080, at *3 (quoting the last sentence of Rule 1.8.1).

¶16 Construing the last sentence of Rule 1.8.1, the court disagreed with Amazon's contention that holiday incentive pay was merely a form of holiday pay

that it could exclude from the calculation of the regular rate of pay. *Hamilton*, 2023 WL 2375080, at *3. The court reasoned that the presence of the word "other" in the phrase "or other pay for non-work hours" indicated that "holiday pay" referred only to compensation for non-work hours. *Id.* Because holiday incentive pay was a premium for hours that an employee worked on a company holiday, the court determined that holiday incentive pay was not "holiday pay" within the meaning of Rule 1.8.1. *Id.*

¶17 The court nonetheless concluded that Hamilton had failed to state a claim that Amazon had violated Colorado law when it did not include holiday incentive pay when calculating his regular rate of pay. *Id.* at *4. In doing so, the court reasoned that because (1) Amazon's exclusion of holiday incentive pay from the calculation of the regular rate of pay complied with the FLSA and (2) "Colorado law is silent on the topic of holiday premium pay," Amazon's practice of following the FLSA did not violate Colorado law. *Id.* Accordingly, the court granted Amazon's motion to dismiss and denied as moot Hamilton's motions to certify the case as a class action and to certify the question of Colorado law to this court. *Id.* Hamilton then appealed to the Tenth Circuit.

¶18 On appeal, Hamilton raised one issue:

> Whether the District Court erred in granting [Amazon's] Motion to Dismiss by holding that compliance with the FLSA does not violate Colorado Law when state law does not specifically incorporate or reject a provision contained within the FLSA that exempts a premium

> rate paid for time worked on a holiday from the calculation of the regular rate of pay for overtime purposes.

Recognizing that the outcome of Hamilton's appeal turned on the interpretation of Colorado wage and hour law, the Tenth Circuit certified the following question to this court: "Whether Colorado law includes or excludes holiday incentive pay from the calculation of '[r]egular rate of pay' under 7 Colo. Code Regs. § 1103-1:1, secs. 1.8 and 1.8.1." *Hamilton v. Amazon.com Servs. LLC*, No. 23-1082, 2024 WL 158760, at *4 (10th Cir. Jan. 12, 2024) (alteration in original).

¶19 We accepted review of the certified question. After considering the Certification of Question of State Law from the Tenth Circuit, the parties' briefing to the Tenth Circuit, and the oral arguments of the parties in this court, we requested and received from the parties supplemental briefing on the specific question presented. We now proceed to decide that question.

II. Analysis

¶20 We begin by addressing our jurisdiction under C.A.R. 21.1, the applicable standard of review, and general principles concerning the interpretation of administrative regulations. We then discuss Colorado's overtime requirement and the rules set forth in COMPS Order 39, the now-operative wage order, which underlie the issue before us. We end by applying these principles of law to answer the Tenth Circuit's certified question.

A. Jurisdiction and Applicable Legal Standards

¶21 Under C.A.R. 21.1(a), we may answer questions of law certified to us by a federal court if the proceeding before that court involves questions of Colorado law that "may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court that there is no controlling precedent in the decisions of the supreme court." The decision as to whether to accept such certified questions rests within our discretion. *See In re Phillips*, 139 P.3d 639, 643 (Colo. 2006).

¶22 Here, the certified question from the Tenth Circuit involves a matter of first impression under Colorado law, and it appears that this court's interpretation of Colorado's wage and hour law in response to the certified question may be determinative of the viability of Hamilton's individual and class action complaint. Accordingly, we accepted jurisdiction over the certified question.

¶23 The certified question before us concerns the interpretation of administrative regulations, which interpretation we review de novo. *Gomez v. JP Trucking, Inc.*, 2022 CO 21, ¶ 27, 509 P.3d 429, 436.

¶24 When construing an administrative regulation, such as a wage order, we are guided by the same principles that apply to statutory interpretation. *Id.* Thus, our primary purpose in interpreting a regulation is to ascertain and effectuate the promulgating body's intent. *Id.* To do this, we look first to the regulatory text,

giving its words and phrases their plain and ordinary meanings. *Id.* If the language of the regulation is unambiguous, then we enforce it as written. *Id.* If the regulation is ambiguous, however, then we may look to other interpretive aids to discern the drafters' intent. *Id.* at ¶ 28, 509 P.3d at 436. Such aids may include "an agency's reasonable interpretation of its regulation" or federal case law construing federal enactments that closely parallel the state provision at issue. *Id.*

B. Colorado's Overtime Requirement

¶25 As noted above, Colorado law requires that employers pay employees overtime at a rate of one and one-half times the regular rate of pay when, as pertinent here, they work more than forty hours in a workweek. Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:4.1.1(A) (2022). For employees like Hamilton, who are paid different hourly rates at different times, Rules 1.8 and 1.8.1 of COMPS Order 39 govern how their overtime pay is calculated. We turn next to those rules.

C. Rules 1.8 and 1.8.1

¶26 Rule 1.8 defines the "[r]egular rate of pay" as "the hourly rate *actually paid* to employees for a *standard, non-overtime workweek*." Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:1.8 (2022) (emphases added).

¶27 Rule 1.8.1, in turn, provided, at the time relevant here:

> The regular rate includes *all compensation* paid to an employee, including set hourly rates, *shift differentials*, minimum wage tip

> credits, non-discretionary bonuses, production bonuses, and commissions used for calculating hourly overtime rates for non-exempt employees. Business expenses, bona fide gifts, discretionary bonuses, employer investment contributions, vacation pay, *holiday pay*, sick leave, jury duty, *or other pay for non-work hours* may be excluded from regular rates.

Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:1.8.1 (2022) (emphases added). (This provision was later amended to add "tips" after "discretionary bonuses" in the last sentence. That amendment does not affect our analysis in this case.)

¶28 The regular rate of pay "must reflect *all* payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments." *Bay Ridge*, 334 U.S. at 461 (emphasis added) (quoting *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 424 (1945)). Those payments include, as pertinent here, shift differentials, which, as noted above, are defined to comprise the scenario in which "an employee receives a higher wage or rate because of undesirable hours or disagreeable work." *Id.* at 468–69. Unlike an overtime premium, which is extra pay for previous work that an employee has performed during a workweek or workday, a shift differential is extra pay because of either the character of the work done or the time at which the employee was required to work. *Id.* at 465, 469.

¶29 Hamilton argues that for a number of reasons, holiday incentive pay must be included in calculating an employee's regular rate of pay, which, in turn, affects the amount of overtime due.

¶30 First, he contends that "all compensation paid to an employee" means "all sums paid to an employee for work performed." Because holiday incentive pay is compensation for hours worked on a company holiday, he maintains that it falls within the broad definition of "compensation" and, thus, must be included in the calculation of the regular rate.

¶31 Second, he asserts that even though the phrase "holiday incentive pay" does not appear in Rule 1.8.1, it is a shift differential, which is expressly included among the categories of compensation that are used to calculate the regular rate of pay. Thus, he contends that Amazon should have included his holiday incentive pay in the calculation of his regular rate.

¶32 Third, Hamilton argues that the calculation of the regular rate of pay necessarily includes holiday incentive pay because holiday incentive pay is not among the categories of compensation that may be excluded from that calculation. In particular, he asserts that because Rule 1.8.1 allows only pay received for *non-work* hours to be excluded from the calculation, holiday incentive pay, which is pay for work performed on a company holiday, may not be excluded.

¶33 Finally, he argues that because the language of Rules 1.8 and 1.8.1 is unambiguous, this court need not look to the FLSA or its regulations to answer the question presented.

¶34 Amazon, in contrast, urges this court to read Rules 1.8 and 1.8.1 to exclude holiday incentive pay from the calculation of the regular rate of pay. It argues that holiday incentive pay is not included in that calculation because (1) Colorado law limits the regular rate of pay to compensation that an employee earns in a standard, non-overtime workweek; and (2) under Rule 1.8.1, the regular rate includes only compensation "used for calculating hourly overtime rates for non-exempt employees," and "holiday incentive pay" is not among the types of pay included in this calculation. Because, in Amazon's view, a "standard, non-overtime workweek" means "a typical workweek with no holidays or other unusual days off," and because Rule 1.8.1 does not expressly refer to "holiday incentive pay," the calculation of the regular rate cannot include such pay. This reading is proper, Amazon posits, because (1) it is consistent with the FLSA, which, as noted above, permits employers to exclude from the calculation of the regular rate of pay extra compensation paid at a premium rate of at least one and one-half times the rate paid for work on holidays, 29 C.F.R. § 778.203(c) (2020); and (2) the Colorado Department of Labor and Employment ("CDLE") did not intend to depart from federal law. Lastly, Amazon contends that reading Rules 1.8 and 1.8.1 to include holiday incentive pay within the calculation of the regular rate would unfairly surprise Colorado employers, who, Amazon asserts, had no notice of such an interpretation.

¶35 In considering this interpretive dispute, we begin, as we must, with the text of the regulations themselves.

¶36 As an initial matter, we perceive nothing in the plain language of Rules 1.8 or 1.8.1 that permits an employer to exclude holiday incentive pay from the calculation of the regular rate of pay. Rule 1.8.1 provides that pay for "non-work hours," such as holiday pay, may be excluded from the regular rate. As noted above, however, holiday incentive pay refers to pay for hours that an employee *works* on a company holiday. Reading holiday pay as encompassing holiday incentive pay would, therefore, render the language "or other pay for non-work hours" superfluous, which we cannot do. *See Elder v. Williams*, 2020 CO 88, ¶ 18, 477 P.3d 694, 698 (providing that when construing a statute, "we avoid constructions that would render any words or phrases superfluous"). Accordingly, as the federal district court found, holiday incentive pay is not "holiday pay" within the meaning of Rule 1.8.1, and the text of Rule 1.8.1 therefore does not permit holiday incentive pay to be excluded from the calculation of the regular rate of pay.

¶37 The question remains, however, whether, under Rules 1.8 and 1.8.1, holiday incentive pay is included in the calculation of the regular rate of pay. We conclude for two reasons that it is.

¶38 First, holiday incentive pay falls within the plain and ordinary meaning of "all compensation paid to an employee" under Rule 1.8.1. Although COMPS Order 39 does not define "compensation," it incorporates the definition of "compensation" set forth in section 8-4-101(14)(a)(I), C.R.S. (2023). Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:1.11 (2022). Section 8-4-101(14)(a)(I) defines "compensation" to mean, in pertinent part, "[a]ll amounts for labor or service performed by employees." Because holiday incentive pay, per Amazon's policies, compensates employees "time and a half for the hours worked" on a company holiday, it falls within the meaning of "all compensation" under Rule 1.8.1. And because the regular rate of pay includes all such compensation, Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:1.8.1 (2022), the rule's plain language mandates that holiday incentive pay be included in the calculation of the regular rate of pay.

¶39 Second, we agree with Hamilton that holiday incentive pay is a shift differential. As noted above, a shift differential is a higher wage or rate that is paid to an employee when, among other things, the employee works undesirable hours, such as on company holidays. *See Bay Ridge*, 334 U.S. at 468–69. Notwithstanding Amazon's assertion to the contrary, this is precisely what holiday incentive pay is. And because Rule 1.8.1 makes clear that shift differentials *are* included in the calculation of the regular rate of pay, and Amazon conceded at oral argument that an employer could not exclude shift differentials from that calculation, we

conclude that holiday incentive pay must "enter into the determination of the regular rate of pay." *Id.* at 469.

¶40 In reaching this conclusion, we are unpersuaded by Amazon's argument that a "standard, non-overtime workweek" refers only to those weeks in which there are no company holidays or "unusual days off." As Hamilton asserts, it would be illogical to interpret "standard, non-overtime workweek" to exclude weeks that include overtime, holidays, or both because one purpose of the calculation of the regular rate of pay is to determine overtime compensation. Thus, in our view, "the hourly rate actually paid to employees for a standard, non-overtime workweek" under Rule 1.8.1 plainly refers to the amount paid to an employee for all hours worked during the employer's predetermined seven-day period, *see* Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:1.13 (2022) (defining "[w]orkweek" as "any consecutive set period of 168 hours (7 days) starting with the same calendar day and hour each week"), excluding any overtime to be paid to the employee as a result of the calculation.

¶41 Nor are we persuaded by Amazon's argument that "all compensation" in Rule 1.8.1 is somehow limited by the phrase "used for calculating hourly overtime rates for non-exempt employees." Whatever that concluding phrase may mean, Amazon has conceded that a shift differential is included within the calculation of

the regular rate of pay, and for the reasons discussed above, we believe that holiday incentive pay is a shift differential.

¶42 Our conclusion in this regard finds further support in the fact that "[t]he provisions of the COMPS Order shall be liberally construed, with exceptions and exemptions accordingly narrowly construed." Dep't of Lab. & Emp., 7 Colo. Code Regs. 1103-1:8.7(A) (2022). Amazon asks us to do the opposite, namely, to read the exceptions and exemptions broadly, so as to create an exclusion that is not provided for in the regulations.

¶43 We likewise are unpersuaded by Amazon's argument that we should read Rules 1.8 and 1.8.1 harmoniously with the FLSA. As an initial matter, it is well established that "states are free to provide employees with benefits that exceed those set out in the FLSA." *Gomez*, ¶ 46, 509 P.3d at 439–40; *accord Brunson v. Colo. Cab Co.*, 2018 COA 17, ¶ 21, 433 P.3d 93, 97. The FLSA, therefore, "sets a floor, not a ceiling, on compensation that employees must receive." *Gomez*, ¶ 46, 509 P.3d at 440 (quoting *Barefield v. Vill. of Winnetka*, 81 F.3d 704, 711 (7th Cir. 1996)). Moreover, before we may consider any federal precedent interpreting an identical or substantially similar federal enactment, we must look to the controlling regulation's plain language. *Id.* at ¶¶ 32, 49, 509 P.3d at 437, 440.

¶44 Here, Colorado law is not identical or substantially similar to the FLSA with regard to the issue before us. For example, the FLSA excludes from the regular

rate of pay "extra compensation provided by a premium rate paid for work by the employee on . . . holidays" and further provides that extra compensation paid for such work "shall be creditable toward overtime compensation." 29 U.S.C. § 207(e)(6), (h)(2). Colorado law provides no such exclusion or credit. Nor have we found—and Amazon does not identify—when and how the CDLE expressed its intent to adhere to the FLSA on the issue before us. To the contrary, in its amicus brief in this case, the CDLE indicated the opposite intent. For these reasons alone, we perceive no basis on which to incorporate the FLSA into Colorado law, as Amazon requests.

¶45 In any event, for the reasons set forth above, we believe that the applicable regulations are plain and unambiguous. Accordingly, we must enforce them as written and need not look to the FLSA for guidance. *Gomez*, ¶¶ 27, 32, 509 P.3d at 436–37.

¶46 Finally, notwithstanding Amazon's assertion to the contrary, we perceive no unfairness in enforcing the plain language of the applicable regulations, even though Amazon may have construed them differently than we do now.

¶47 Accordingly, we conclude that holiday incentive pay is included in the calculation of the regular rate of pay under Colorado law.

III. Conclusion

¶48 For these reasons, we answer the certified question by concluding that holiday incentive pay is included in the calculation of the "[r]egular rate of pay" under Rules 1.8 and 1.8.1.