

## NLRB General Counsel Issues Guidance On Calculating Backpay Under *Latino Express*

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### Calculate Backpay

A new memorandum from NLRB Acting General Counsel Lafe Solomon released this week provides additional guidance for calculating backpay awards under the new standard set by the Board in *Latino Express, Inc.*, 359 NLRB No. 44 (2012), decided in December 2012.

*Latino Express* changed the way backpay awards are calculated, with the Board finding that in most cases where backpay is awarded as a remedy, losing employers not only have to pay the backpay and interest, but also an additional amount to cover the extra taxes the employees had to pay due to the lump sum backpay payment. The Acting General Counsel's memorandum outlines the procedures to be used when calculating the additional tax amounts, which is accomplished via an automated program and takes into account the employee's specific filing status, exemptions, dependents, and state tax liability. The memorandum also requires an award of "incremental taxes," which are defined as the taxes owed on the excess tax award. Depending on the circumstances of the employee, the new tax remedy may add significant amounts to the backpay award.

The full memorandum is available on the Board's [website here](#) (PDF).

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