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Reporting for Duty: In California, It's Compensable, Even When Employees are Told Not to Come to Work

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Last week's decision in *Ward v. Tilly's Inc*. means that California employers with on-call policies are required to pay a minimum of two hours reporting time pay, even if the employee is told there is no need to come into work that day.

A California Court of Appeal held that a company's on-call scheduling policy requiring employees to call the employer in advance of a shift to find out if they need to appear for work triggered "reporting time" pay obligations under the California Industrial Welfare Commission's (IWC) Wage Orders.

Under the Wage Orders, an employee who is required to report for work and does report must be paid for half the employee's usual or scheduled day's work, but in no event less than two hours' pay, nor more than four hours' pay, at the employee's regular rate of pay.

On-Call Policy Giving Rise to Employee's Claim

In *Ward*, a retail employer, Tilly's, required its employees to be available to work on-call shifts. The policy required an employee to call two hours before the start of an on-call shift to determine whether Tilly's needed the employee to work that shift. Tilly's instructed employees to assume they were required to work their on-call shifts unless they were told they were not needed. If Tilly's did not need an employee to work an on-call shift, the employee was not paid. Tilly's disciplined employees for failing to call in, calling in late, or refusing to work an on-call shift. This discipline was similar to the discipline imposed for missing regular, in-store shifts.

Ward, a Tilly's employee, brought a class action lawsuit alleging that Tilly's violated the Wage Order's reporting time pay requirements. The trial court dismissed the complaint, holding that those requirements do not apply unless the employee physically shows up to report for work at the workplace.

What "Reporting for Work" Means

The California Court of Appeal reversed the trial court's decision, with the majority holding that "an employee need not necessarily physically appear at the workplace to 'report for work.' Instead, 'report[ing] for work' within the meaning of the Wage Order is best understood as presenting oneself *as ordered*." Tilly's required its employees to "report for work" by calling in at least two hours before the on-call shift, triggering the Wage Order's reporting time pay requirements.

But the dissent in *Ward* concluded that the legislative history of the Wage Order supported the trial court's interpretation, which would have limited reporting time pay to those circumstances in which an employee physically appears at the place of work. The dissent agreed with a California federal court's conclusion that "call-in shifts do not trigger reporting-time penalties, even if the scheduling practice is inconvenient and employee-unfriendly."

Takeaways

While it is possible that *Ward* will be reviewed by the California Supreme Court (particularly in view of the vigorous and well-reasoned dissent), it is far from clear that such review will occur; nor is it clear how the California Supreme Court would resolve the issue. Prudent California employers should review their on-call policies in light of *Ward*, and consider modifying mandatory pre-shift call-in obligations in order to avoid triggering reporting time pay requirements.