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California Supreme Court Gives Employers Break on “Day of Rest” Laws

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It is no secret that ***California***’s wage-hour laws are complex and often raise questions that employers, employees and the courts struggle with. As we wrote here more than a year ago, faced with questions regarding California’s ambiguous “day of rest” laws, the Ninth Circuit Court of Appeals threw up its hands and asked the California Supreme Court to clarify those laws.

Among the questions to be answered was one that impacts a great many employers, particularly those in the retail and hospitality industries – does the requirement that an employee be provided a “day of rest” apply to each workweek (such that an employee could be scheduled to work 12 consecutive days over two workweeks), or does it apply to each rolling, 7-day period (such that employees could never be scheduled to work more than 6 consecutive days)?

Employers have been awaiting the Supreme Court’s decision, not just because it could require them to change their scheduling practices, but because an adverse interpretation of the “day of rest” laws could lead to a great many lawsuits and

exposure over past practices.

The California Supreme Court issued its opinion in ***Mendoza v. Nordstrom, Inc.*** on Monday. And the Court's answers to the Ninth Circuit's questions are ones that should please most employers.

Perhaps most importantly, the Supreme Court concluded that "a day of rest is guaranteed for each work week," not for each rolling, 7-day period – a conclusion that would allow an employer to schedule an employee to work for as many as 12 consecutive days without violating the law (so long as the employee is not required to work 7 in one workweek).

The California answered the Ninth Circuit's questions as follows:

1. With regard to California Labor Code section 551, which provides that "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven," is the required day of rest calculated by the workweek, or is it calculated on a rolling basis for any consecutive 7-day period?

As the Ninth Circuit Court noted, this question was no mere matter of semantics. One answer would lead to liability for the employer, while the other would not.

Reviewing the "manifestly ambiguous" statutory language and legislative history, the California Supreme Court concluded, "A day of rest is guaranteed for each workweek. Periods of more than six consecutive days of work that stretch across more than one workweek are not per se prohibited."

The Court explained, "The Legislature intended to ensure employees, as conducive to their health and well-being, a day of rest each week, not to prevent them from ever working more than six consecutive days at any one time."

2. With regard to California Labor Code section 556, which exempts employers from providing such a day of rest when the total hours of employment do not exceed 30 hours in any week or six hours in "any" one day thereof, does the exemption apply when an employee works less than six hours in any one day of the applicable week, or does it apply only when an employee works less than six hours in each day of the week?

As the Ninth Circuit noted, the word "any" could support either interpretation. And, again, this was not a matter of semantics. The different interpretations of "any" would lead to very different liability determinations.

The California Supreme Court concluded, "The exemption for employees working shifts of six hours or less applies only to those who never exceed six hours of work on any day of the workweek. If on any one day an employee works more than six hours, a day of rest must be provided during that workweek, subject to whatever other exceptions might apply."

3. With regard to California Labor Code section 552, which provides that an employer may not "cause" his employees to work more than six days in seven, what does the word "cause" mean? Does it mean "force, coerce, pressure, schedule, encourage, reward, permit, or something else?"

Again, the different interpretations of “cause” would lead to different liability determinations.

The California Supreme Court concluded, “An employer causes its employee to go without a day of rest when it induces the employee to forgo rest to which he or she is entitled. An employer is not, however, forbidden from permitting or allowing an employee, fully apprised of the entitlement to rest, independently to choose not to take a day of rest.”

The California Supreme Court’s answers to these questions – particularly the first and third – will likely be greeted with much relief from employers in California, especially in the retail and hospitality industries where it is not uncommon to schedule employees to work 7 days or more in a row with shifts of varying lengths, and where employees may often swap shifts with each other such that they are working seven days or more in a row.

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