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California Supreme Court Clarifies When a Day of Rest is Required

Mendoza v. Nordstrom, Inc., Supreme Court Case No. S224611

The Supreme Court of California has clarified employers obligations to provide employees with a "day of rest." California Labor Code section 551 provides "every person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Further, the code states that no employer shall "cause" their employees to work more than six days in seven. (Lab. Code § 552.) These provisions do not apply to any employer or employee "when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof." (Id. at § 556.)

In Mendoza, the federal Ninth Circuit Court of Appeals certified to the California Supreme Court three questions arising from these statutory provisions:

Is the day of rest required by sections 551 and 552 calculated by workweek, or does it apply on a rolling basis to any seven-consecutive-day period?

Does the section 556 exemption apply so long as an employee works six hours or less at least one day of the applicable week, or does it apply only when an employee works no more than six hours on each and every day of the week?

What does it mean for an employer to cause an employee to go without a day of rest?

After reviewing the language of sections 551, 552, 556, the corresponding language found in the IWC Wage Orders, and the interpretation of the operative language by state agencies (Industrial Welfare Commission and Department of Labor Standards Enforcement), the Court concluded in response to the first question posed by the Ninth Circuit that Sections 551 and 552 are applicable to workweeks and not on a rolling basis. This interpretation harmonizes sections 551 and 552 with the history and statutory scheme and subjects employees and employers to a single

set of consistent day of rest requirements, thereby facilitating the scheduling of work. (Mendoza v. Nordstrom, Inc. (Cal., May 8, 2017, No. S224611) 2017 WL 1833143, at *4.)

In response to the Ninth Circuits second question, the Court concluded that the six hours or less daily exception is satisfied only if every daily shift is six hours or less. (Id. at *9.) This means that if even one shift in the workweek exceeds 6 hours, the employee is entitled to a day of rest.

On the third question of when an employer causes an employee to go without a day of rest, the Court stated that to cause something requires some affirmative role in motivating or inducing action, not simply a passive failure to prevent action (Id. at *10.) Under section 552, an employers obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality as to the exercise of that right. An employer may not encourage its employees to forego rest or conceal the entitlement to rest, but it is not liable simply because an employee chooses to work a seventh day. (Id. at *9.) In other words, the employer cannot affirmatively seek to motivate an employees forsaking rest, but neither need it act to prevent such forsaking. (Id. at *10.)

What this means for employers:

Applying the day of rest provisions to a workweek, instead of on a rolling basis, will make it easier for employers to consistently plan work schedules, and ultimately comply with the law.

Part-time employees who work less than 6 hours a day can be scheduled to work 7 days per workweek unless the employee works more than 6 hours during any given shift occurring during the workweek. If the employee works more than 6 hours on any shift, then the employee is entitled to a day of rest for that workweek. Employers should monitor part-time

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employee schedules to ensure compliance.

Lastly, employers do not have to ensure that employees take their day of rest. Employees can choose to work 7 days a week. Employers must inform employees of their right to a rest day and then maintain absolute neutrality as to the exercise of that right. What employers cannot do is take some affirmative role in "motivating or inducing" the employee to forego their rest. To meet their obligations, employers should (1) inform employees of their right to a day of rest; (2) train supervising/managerial staff on the absolute neutrality requirement, i. e., train them not to pressure workers into working 7 days; and (3) for an employee that chooses to work 7 days, document that the employee was informed of his/her right to a day of rest but voluntarily chose to work the seventh day during the workweek.

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