The “Rest” Of The Story: California Supreme Court Clarifies The Obligation To Provide Rest Days To Employees

In *Mendoza v. Nordstrom, Inc.*, the California Supreme Court responded to questions posed by the Ninth Circuit concerning the interpretation of California’s day-of-rest statutes, which are found in Labor Code Sections 550-558.1. Initially, former Nordstrom employees filed a Private Attorneys General Act action, alleging that Nordstrom had failed to provide guaranteed days of rest to its nonexempt employees in California. A federal district court judge heard the case, held that there was no violation, and dismissed the action. The employees appealed, and the Ninth Circuit asked the California Supreme Court for guidance as to several questions.

The California Supreme Court first answered a question concerning the calculation of the seven-day period provided in Labor Code Section 551 and 552, which entitle every employee to one day’s rest from work “in seven.” The Court held that there is a day of rest guaranteed for each “workweek,” rather than per rolling seven-consecutive-day periods, and that there is no per se prohibition on periods of more than six consecutive days of work across more than one workweek. The Court went on to provide even more latitude to employers and employees in scheduling, noting that the requirement is that on balance, employees must average no less than one day’s rest for every seven days’ worked over the course of every calendar month. That is, if an employee works every day of a given week, then he or she must be permitted multiple days of rest in another week to compensate.

Second, the California Supreme Court addressed the exemption to the day-of-rest requirement for employees who do not exceed 30 hours of work in any week or six hours of work in any one day of the week, which is found in Labor Code Section 556. The trial court had concluded that the exemption applied if an employee merely had at least one shift of six hours or less during the week, but the California Supreme Court disagreed with that interpretation. Instead, the Supreme Court concluded that the exemption applies only to employees who never exceed six hours of work on any day of the workweek, and who work no more than 30 hours total during the workweek.

Finally, the California Supreme Court clarified what it means for an employer to “cause” an employee to go without a day of rest, which is prohibited by Labor Code Section 552. The Court held...
that an employer causes an 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, however, is not liable simply because an employee chooses not to take a day of rest. So long as the employee is fully apprised of his or her entitlement to take the day of rest, an employer is not prohibited from allowing or permitting that employee independently to choose not to do so. The Court did not further opine on what would be considered “inducing” the employee to forgo rest, other than to say that both express requirements and implied pressure could be considered inducement. The Court also expressly instructed that the mere payment of overtime is not an impermissible employer inducement.

The Court did not address the situation for unionized workforces, where a collective bargaining agreement governs wages and hours of work. The Labor Code provides, however, that unless the collective bargaining agreement expressly provides otherwise, the requirement of one day’s rest in seven does apply to those employees.

In sum, California employers are reminded that unless their nonexempt employees work no more than six hours a day and no more than 30 hours in a week, or unless a collective bargaining agreement expressly provides otherwise, those employees are entitled to one day of rest for each workweek. Should an employee need to work every day of a given week, then he or she must be provided with an extra day of rest in another week to compensate. Employees need not be prohibited from working seven days in a workweek if they wish, but there can be no express or implied requirement that they do so. Finally, if a nonexempt employee does work seven days in a workweek, regardless of the reason, employers need to remember that the employee is entitled to 1.5x overtime pay for the first eight hours of work on that seventh day, and to double time pay for hours beyond eight, unless a collective bargaining agreement exception applies.

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