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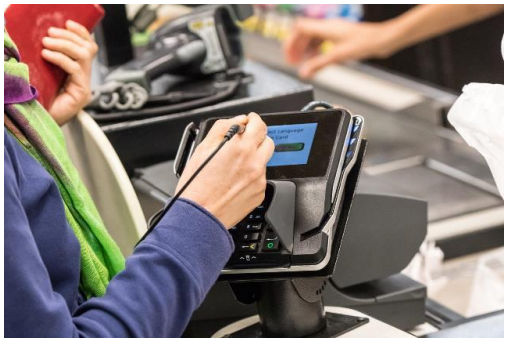
California's "Day of Rest" Requirements Clarified

The California Labor Code limits employers' scheduling practices by generally prohibiting employees from working "more than six days in seven." In February 2015, the 9th Circuit asked the California Supreme Court to answer three unsettled questions concerning the state's so-called "day of rest" requirements. On May 8, the court provided important answers for employers. In light of these clarifications, employers should review and update their scheduling practices and other employment policies as needed to ensure compliance.

Background

The California Labor Code prohibits employees from working "more than six days in seven," subject to certain narrow exceptions. Labor Code Section 551 provides that "every person employed in any occupation of labor is entitled to one day's rest therefrom in seven," and Section 552 says "no employer of labor shall cause his employees to work more than six days in seven." Labor Code Section 556 provides an exception to those requirements "when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof."

Former hourly employees of Nordstrom, Inc. in California sued the retailer, claiming it failed to provide statutorily guaranteed days of rest in violation of the Labor Code. The plaintiffs maintained that they worked more than six consecutive days (with some shifts lasting six hours or less) on several occasions when they were asked to fill in for other employees. The trial court dismissed the day of rest claims, concluding that: Section 551 guarantees one day of rest for any consecutive seven days, calculated on a rolling basis; the guarantee does not apply if the employee had at least one shift of six hours or less during the period; and Nordstrom did not force or coerce, and thus cause, the employees to work more than six consecutive days. The plaintiffs appealed.



On appeal, the U.S. Court of Appeals for the 9th Circuit certified the following three questions to the California Supreme Court to decide how the state's day of rest laws operate:

- Is the guaranteed one day's rest in seven calculated on a workweek or a rolling seven-day basis?
- Does the exemption for workers employed no more than six hours in any day apply when an employee works six hours or less on each day of the week, or on at least one day of the week?
- What does it mean for an employer to "cause" an employee to go without a day of rest?

California Supreme Court Weighs In

On May 8, the California Supreme Court answered the certified questions. In *Mendoza v. Nordstrom, Inc.*, the state's highest court clarified that the Labor Code sections at issue generally require that employees receive at least one day of rest during each workweek, subject to certain limitations.

Workweek Rather Than Rolling Basis

Before the district court, the plaintiffs successfully argued that the law applies on a rolling basis. Thus, an employee who has worked six days in a row generally could not be required to work a seventh day, regardless of the employer's designated workweek. However, the California Supreme Court rejected that view.

Acknowledging that the law is ambiguous, the court largely relies on legislative history, protections in Industrial Welfare Commission Wage Orders, and other Labor Code provisions to conclude that Sections 551 and 552 "are most naturally read to ensure employees at least one day of rest during each week." It recognized that if the statutory protection for one day's rest in seven applies on a weekly basis, an employee who takes a day off early in one workweek and late in the following workweek may end up working more than six days in a row across two workweeks. However, it found no legislative attempt to prevent employees from doing so.

A Narrow Exemption

The court agreed with the employees on the second question, holding that the exemption for workers employed no more than six hours in any day applies only to employees who work shifts of six hours or less every day of the applicable week. Thus, an employee who works more than six hours one day and less than six hours every other day in a workweek would be entitled to seventh-day-rest protection for that week.

Opting to Forgo Rest

With respect to the third question, the court provided clarity on what it means to "cause" an employee to go without a statutory day of rest. It rejected both the former employees' arguments that an employer violates the statute whenever it allows an employee to work a seventh day and the employer's contention that cause is established only if the employer requires, forces or coerces the employee to work a seventh day.

The court concluded that an employer is obligated to inform employees of their entitlement to a day's rest and remain neutral with respect to their exercise of the right. While the employer may not encourage employees to forgo their entitlement or conceal it, neither is an employer liable "simply because an employee chooses to work a seventh day." Absent some affirmative action to motivate or induce an informed employee to work, an employer does not violate the Labor Code's prohibition. As the court noted, overtime pay is not an impermissible employer inducement. Rather, it simply reflects compliance with federal and state mandates.

In Closing

California's high court has resolved three key questions concerning the application of the state's day of rest statutes. Employers should review and, as needed, update scheduling practices and other employment policies to ensure compliance.

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