

AVOIDING “REPORTING-TIME” CLAIMS

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In California, conditions of employment, including standards governing compensation, are set forth in the Wage Orders promulgated by the Industrial Welfare Commission. These Wage Orders are generally given legal effect to the extent that they are consistent with the California Labor Code. Unfortunately, many of these provisions go unheeded by employers despite the fact that they are published in the California Code of Regulations and have been in effect for many years.

One commonly overlooked provision is the section on “Reporting Time.” This provision puts limits on an employer’s right to call someone in to work without providing a minimum amount of working time.

WHEN REPORTING-TIME PAY IS REQUIRED

The Wage Order dictates that each day an employee reports for a scheduled day’s work but is provided less than half of the employee’s usual or scheduled day’s work, the employee must be paid for half of the usual or scheduled day’s work, but in no event for less than two hours nor more than four hours, at the employee’s regular rate of pay. For example, if an employee was scheduled to work six hours, the reporting-time guarantee would be three hours on the first reporting.

Another rule applies when an employee is required to report to work a second time during the work day, but is provided less than two hours of work on this second reporting. In this

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case the employee must be paid for two hours at the employee's regular rate of pay.

A few exceptions apply, including when 1) operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; 2) public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or 3) the interruption of work is caused by an Act of God or other cause not within the employer's control. One situation that could permit the last exception to operate would be power outages caused by natural disasters, inclement weather, or community "roving blackouts." Also excluded from the reporting-time provisions are employees on paid standby status who are called to work at a time other than their scheduled reporting time.

HOW TO PAY REPORTING-TIME PREMIUMS

Reporting-time pay is considered a "premium" wage, but will not be considered as part of the regular rate for purposes of overtime compensation because it does not represent pay for "hours worked." A number of examples may be provided to illustrate how payment of reporting time works. For example, under the first reporting rule, if an employee is scheduled to report to work for an eight-hour shift and works for only one hour, the employee is entitled to at least four total hours of pay.

Thus, you are obligated to supplement the employee's pay an additional three hours of reporting-time pay at the regular rate of pay. For purposes of calculating the regular rate, only the hour actually worked counts as actual hours worked under the regular rate calculation. Let's assume that the employee was paid \$10 per hour and worked as follows:

M TU W TH F TOTAL WORKING TIME

1 10 10 10 10 41 HOURS

Straight-time hours: 33 hours x \$10.00 = \$330.00 [four eight days Tuesday through Friday, plus one hour on Monday]

Overtime hours: 8 hours [2 hours x 4 days] x \$15.00 = \$120.00

Reporting-time pay for Monday: 3 hours [4 hour guarantee – worked] x \$10.00 = \$30.00 (not included in regular rate)

Total compensation: \$480 [\$330 + \$120 + \$30].

As you can see in the above example, if some work, but less than half of the scheduled day's work, is provided, reporting-time pay is only a *supplemental* amount paid to meet the level of minimum pay required, which in the above example is four hours. It is always paid apart from overtime and is not a factor in the calculation of the regular rate.

If an employee is required to report to work a second time in any one workday beyond the regular shift and is furnished less than two hours of work on the second reporting, he or she must be paid for at least two hours at his or her regular rate of pay. For example, if the above employee worked eight hours on Monday and is called back for another job the same day and spends a total of 1.5 hours on the "call back," only an additional 0.5 hours would have to be paid to satisfy the Wage Order's reporting-time pay requirement. The 0.5 hours is paid as straight time because it's not treated as compensation for hours worked. It's like a guarantee or bridge over to the minimum amount of time these employees should have been provided for work:

M TU W TH F TOTAL WORKING TIME

9.5 8 8 8 8 41½ HOURS

Straight-time hours: 40 hours x \$10.00 = \$400.00

Overtime hours: 1.5 hours x \$15.00 = \$22.50

Reporting-time pay for Monday: 0.5 hours [2 hours minimum hours worked] = \$5.00 (not included in regular rate)

Total compensation: \$427.50 [\$400 + \$22.50 + \$5.00]

Again, the 0.5 premium is not considered "compensation" for hours worked in computing the regular rate for purposes of calculating overtime.

AVOIDING REPORTING-TIME PROBLEMS

Reporting-time pay was designed to compensate employees for the inconvenience and expense of reporting to work without being furnished at least a half day's work subject to the minimum and maximum thresholds (two and four hours respectively). The reporting-time provisions do not operate as pay *guarantees* unless the employee is actually required to incur the expense and inconvenience of reporting to work. Consequently, use foresight in scheduling an

employee's work before the employee reports to work. If a scheduled work day is cancelled, notify the employee in advance, or by telephone, of the cancellation before being required to report to work on the cancelled work day.

Because reporting-time pay can be complicated with differing fact situations, it's impossible to anticipate all fact situations that may trigger reporting-time pay provisions. Disputes may arise regarding what premium is due, or which reporting-time pay provision applies, when employees work variable schedules during the week. Employers may make mistakes simply because they do not understand how to apply the law to a specific situation.

Employees alleging unpaid reporting time could file lawsuits, or alternatively, file claims with the California Labor Commissioner, which enforces compliance with the Wage Orders, and authorizes Deputy Labor Commissioners to conduct hearings and make awards that can be converted into a judgment that has the force of law.

Although the fact-specific nature of these kinds of claims may bar their consideration in a class action, an employer's repeated and systematic failure to pay reporting time nonetheless could be included in a class action complaint. Whether or not certified as a class claim, like many wage and hour compliance issues, prevention is much better than curing a long-standing policy that could lead to cumulative liability and unnecessary costs in defending lawsuits or administrative claims.

If you're unsure about how to pay it correctly, give us a call.