



Decision Provides Greater Flexibility In Scheduling Meetings

Insights

10.01.12

(California Wage/Hour Update, No. 4, October 2012)

Employers in California have been perplexed by various state regulations that have confusing and inconsistent provisions. One regulation addresses the "reporting-time" premium which requires employers to pay a minimum amount of hourly wages when employees report to work. Different standards apply depending on whether an employee reports for the first or second time within a single calendar work day.

The Wage Orders generally provide that an employee who reports to work as required, but who is furnished less than half the usual or scheduled day's work, shall be paid for at least half the usual or scheduled work, but in no event less than two hours nor more than four hours pay, at the employee's regular rate.

Employees required to report a second time in any one work day, and who are furnished less than two hours of work on that second reporting, shall be paid at least two hours at the regular rate.

Trying To Figure It Out

Reporting-time pay acts as a guarantee or supplement to hours actually worked up to the reporting time entitlement. A common scenario is this: an employee who usually works eight hours on the night shift is called in for a pre-scheduled one-hour training meeting at 8:00 a.m. on a day when the employee is not scheduled to work his regular shift. The meeting lasts 45 minutes. The employee later goes to the California Labor Commissioner and demands 3.25 hours of reporting time pay for four hours of total pay for the meeting because 1) the employee was only provided with 45 minutes; 2) the employee's normal shift is eight hours; 3) this was the first reporting; and 4) four hours is half of the employee's regularly-scheduled shift.

The deputy Labor Commissioner either agrees with the employee and awards an additional 3.25 hours or applies the minimum two-hour rule and awards only 1.25 additional hours on the basis that the meeting occurred on a day when the 8 hour shift was not scheduled. The employer would contest either ruling because the only applicable "schedule" on the day in question is the one-hour meeting, and the employee was paid for more than half of the scheduled time.

Court Ruling Brings Some Clarity

A recent decision from the Second Appellate District has clarified the law, resulting in a commonsense interpretation of the plain wording of the regulation. *Aleman v. Air Touch Cellular*. In *Aleman*, two employees sought reporting time pay under similar facts. The employees were scheduled to attend a 1.5 hour meeting, but were paid for only 1 hour. The appeals court affirmed the trial court's ruling that no reporting time was due, stating that the minimum two-hour reporting-time pay requirement applies only if the employee is furnished work for less than half the scheduled time, which clearly was not the case if the employee was paid for one hour after being scheduled to work 1.5 hours. By so ruling, the court rejected the Labor Commissioner's internal guidelines as non-binding on the courts.

The court further made clear that if an employee was called to work for a meeting of indeterminate length on a day other than a regularly scheduled day, the minimum two-hour reporting-time pay would be triggered if the employee was paid for less than two hours on that day.

Finally, the court reasoned that any time an employee reports to work a second time in a work day, a different trigger applies: the minimum two-hour reporting-time pay requirement would apply on the second reporting without regard to how much time was scheduled. Importantly, the court further ruled that parties who prevailed on a reporting-time claim are entitled to be reimbursed for their reasonable costs and attorneys' fees.

One employee in *Aleman* further alleged that he was not paid a "split-shift premium" when he was required to report to work on two separate occasions in one day. A "split shift" occurs when an employee works two shifts that are separated by a period of time that is greater than a bona fide meal period. The Wage Order, section 4, provides that, when an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that work day (unless the employee resides at the place of employment).

The employee essentially argued that, when an employee works a split shift, he or she is entitled to one hour's pay regardless of the hourly rate paid to the employee. The court rejected the employee's claim, making clear that no additional compensation was owed if the employee worked a split shift, as in that case, and "was paid a total amount greater than the minimum wage for all hours worked plus one additional hour."

Summing It Up

The *Aleman* decision is good news for employers because it affirms the fact that they can schedule meetings in advance of a scheduled work shift or on a day not regularly scheduled for work without suffering exposure for reporting-time pay as long as the length of the meeting is noticed in advance and the employee is paid for at least half of that scheduled time.

One caveat: Meetings scheduled after an employee's shift or on a second reporting will still be subject to the minimum two-hour reporting time requirement. You can also avoid split-shift premium exposure by simply applying the mathematical formula provided by *Aleman* and making sure the split shift premium requirements have been satisfied.

sure the split-dollar premium requirements have been satisfied.

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