

CALIFORNIA SUPREME COURT'S "DAY OF REST" RULING PUTS EMPLOYERS AT EASE

Insights
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In an unanimous decision, the California Supreme Court held today that California's law requiring one day of rest in seven looks only at the employer's defined workweek when determining the applicable period of time to be analyzed for compliance and liability purposes, and does not specifically require employers to provide one day of rest after six preceding calendar days of work. This decision is a big relief for those employers who schedule employees week-by-week without necessarily considering when the employees worked the previous week, outlining a clear and direct way that employers can comply with the state's Labor Code.

The decision provides further good news for employers by concluding that their sole obligation is to apprise their workforces of their entitlement to a day of rest and that they can thereafter let the employees decide on their own if they choose to schedule themselves to work a seventh day. By defining what it means for an employer to "cause" its employees to work more than six days in seven in an employer-friendly manner, the state's highest court has created a system that will provide maximum scheduling flexibility for both employers and their workers.

However, the decision does narrow an exception some employers may have relied upon that seemingly provided an escape from liability if an employee worked less than six hours during at least one of the days examined. That exception now only applies if the employee works less than six hours in each of the weeks under the microscope (*Mendoza v. Nordstrom*).

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REST ASSURED: WHAT THE STATUTES SAY

To understand today's opinion, it is important to understand the legal lay of the land. There are four main statutes at play in today's decision: Labor Code sections 510(a), 551, 552, and 556. Here's a quick review of what those statutes actually say:

- Labor Code section 510(a) requires, in part, that "any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." The first eight hours on such days is paid at the rate of no less than one and one-half times the regular rate of pay.
- Labor Code section 551 states that "every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."
- Labor Code section 552 states "no employer of labor shall cause his employees to work more than six days in seven."
- Labor Code section 556 provides an exception to sections 551 and 552 "when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof."

EMPLOYEES CAN'T LET IT REST: THE LAWSUIT

Several years ago, Christopher Mendoza and Meagan Gordon worked in hourly positions at Nordstrom and Nordstrom Rack stores in California. Mr. Mendoza worked more than six consecutive days on three occasions. On each occasion, he only did so because he was asked to fill in for another employee. In each stretch, there was at least one work day where he worked less than six hours. Ms. Gordon's situation was similar: she worked more than six consecutive days on one occasion, but worked less than six hours on two of those days.

Most importantly, neither Mr. Mendoza nor Ms. Gordon worked more than six consecutive days within the same workweek. Instead, the stretches of workdays described above all fell over two consecutive workweeks as defined by the employer, although they were certainly consecutive on the calendar.

Mr. Mendoza filed a putative class action against Nordstrom in California, alleging violations of Labor Code sections 551 and 552. The employer then removed the action to federal court. Although the federal court found that Nordstrom had violated Labor Code section 551 because it concluded the day-of-rest requirement occurs on a “rolling” basis, meaning that employers always had to ensure a day of rest after six preceding calendar days of work, it exonerated the employer because of the escape hatch provided by section 556. The court noted that plaintiffs worked less than six hours at least one day in the consecutive seven-or-more days of work, which meant it believed the employer should avoid liability. Moreover, even if the exemption did not apply, the court found there was no violation of section 552 because there was no evidence that the employer coerced the employees to work those shifts.

TO BE PUT TO REST: THE QUESTIONS

Mr. Mendoza appealed to the federal 9th Circuit Court of Appeals, which hears federal appeals from many west coast states including California. However, the 9th Circuit observed that the statutes regarding a day of rest can be interpreted in different ways, and pointed out that there were no cases from a California state court clarifying how the statutes are supposed to be read. Because a federal court cannot create new interpretations of state law, the 9th Circuit Court of Appeals asked the California Supreme Court to answer the following questions:

1. Should Labor Code section 551, entitling all employees to one day’s rest in seven, be calculated by the workweek or on a rolling basis?
2. Does Labor Code section 556’s exemption from providing a day of rest occur when an employee works less than six hours in any *one* day of the week, or when the employee works less than six hours in *each day* of the week?
3. What does it mean for an employer to “cause” an employee to work more than six days in seven under Labor Code section 552?

COURT RESTS THE CASE: THE ANSWERS

Earlier today, the Supreme Court answered the 9th Circuit’s questions as follows:

1. Workweek, Not Rolling Week

The best news for employers comes from the answer to question 1. The court concluded that Labor Code section 551 only entitles California employees to one day's rest within a workweek as defined by the employer. The court looked to the statute's text and history, then examined the Industrial Welfare Commission's relevant Wage Orders, before coming to this conclusion. Looking at section 510(a) regarding the seventh-day overtime premium, the court found that the "logical inference is that the Legislature views only a seventh day of work during an established workweek as an exception to sections 551 and 552, and intends the day of rest guarantee to apply on a weekly basis."

"We conclude sections 551 and 552, fairly read in light of all the available evidence, are most naturally read to ensure employees at least one day of rest during each workweek," the unanimous court said, "rather than one day in every seven on a rolling basis."

2. Exemption Only Applies In Narrow Circumstances

The court next concluded that the escape hatch provided by section 556 is not as broad as the employer would have liked. Nordstrom had argued that, so long as an employee is given at least one day with no more than six hours' work during a one-week period, that employee could be required to work all seven days without a rest day. The court disagreed. It concluded that Labor Code section 556 only exempts an employer from providing a day of rest when an employee works less than six hours in *each* of the seven consecutive days, or less than 30 hours total.

It noted that Nordstrom's position would have created a situation where the exception would have swallowed the rule. It pointed out how "certain absurdities" could have otherwise resulted had its preferred interpretation been adopted. "If a single day of six hours or less were enough to eliminate seventh-day-rest protection," the court said, "an employee could be required to work, for instance, six straight eight-hour days, followed by a single six-hour day, followed by six eight-hour days, followed by a six-hour day, ad infinitum. Each week, the single slightly shortened day would excuse the employer from providing an actual day of rest, and the day of rest statutes would

be converted from a guarantee of a complete day of rest to a guarantee of at least one day of no more than six hours of work.”

Although this portion of the decision might be considered a “loss” for employers, most would consider it an acceptable loss given the victories gained in the answers offered by the California Supreme Court to questions 1 and 3.

3. Employers Do Not “Cause” A Violation Simply By Allowing A Worker To Work

Finally, the court gave employers further good news by concluding employers only “cause” an employee to work more than six consecutive days when they induce or encourage an employee to forgo his or her day of rest in a workweek. However, the court said an employer is not liable if it passively allows an employee to work a seventh day.

“An employer’s 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,” the court said in answering question 3. “An employer may not encourage its employees to forgo rest or conceal the entitlement to rest, but is not liable simply because an employee chooses to work a seventh day.” Like the other portions of this decision, this section demonstrates a recognition of the realities of modern working life, where employees crave flexibility when scheduling themselves for work and employers appreciate the ability of workers to choose on their own when they will work and when they need time off.

NO REST FOR THE WEARY: WHAT THIS MEANS FOR EMPLOYERS

This ruling is undoubtedly good news for employers, but your work is not done. Ultimately, this ruling provides a good reminder that you should clearly define your workweek so that you can preserve the advantages provided by the court’s interpretation of the state Labor Code. You should already be accustomed to observing your employees’ schedules on a workweek basis in order to comply with overtime laws regarding a seventh-day premium, but this decision hammers home the necessity of this practice.

However, you should be careful to examine whether you have been relying on an assumption that **any** shift shorter than six hours in a workweek exempted them from the one day's rest in seven rule; as today's holding clarifies, **all** of the employee's shifts in the workweek must be below six hours, or the total number of hours in the workweek below 30, in order for the exemption to apply.

Finally, you should remain diligent in ensuring that scheduling managers are not putting pressure on employees to work seven workdays within a workweek, as that could be found to be coercion and result in liability.

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