

# One Minute Memo®



## California Dreaming: Getting Paid For Sleeping On The Job

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Many employers have assumed that California wage and hour law generally follows federal law, unless, of course, the California Legislature had expressed a clear intent to take a different approach on a particular subject. In this respect, for example, consistent with federal law, many employers have assumed that they need not pay on-premises employees who are on call for a 24-hour period for the eight hours of uninterrupted sleep that they could enjoy during that period.

But the California Supreme Court has just given employers a rude awakening. In *Mendiola v. CPS Security Solutions, Inc.*, the Supreme Court held that such employees must be paid for all 24 hours, including sleep time. More alarming still, the Supreme Court emphatically held that California wage and hour law does not follow federal law absent “convincing evidence” that a California statute intended to adopt the relevant federal standard.

### The Facts

CPS Security Solutions (CPS) employed guards to provide security at construction worksites for 16 hours per day on Monday through Friday and 24 hours per day over the weekend. On weekdays, the CPS guards actively patrolled the worksites for eight hours and were on call for eight hours. On weekends, they patrolled for 16 hours and were on call for eight hours.

When on site, CPS guards were required to reside in trailers provided by CPS. The trailers were approximately 150-200 square feet, with amenities including a bed, a bathroom, and a kitchen. The guards could keep personal items in the trailers and generally use on-call time as they wished. Children, pets, and alcohol, however, were not allowed, and adult visitors were permitted only with the CPS client’s prior approval. The guards could not leave the worksite unless they first contacted dispatch and another guard was available to relieve them. If relieved, the guard had to remain available by pager or radio phone and close enough to the worksite to return within 30 minutes.

Under their employment agreement, the guards were paid hourly for time spent on active patrol. They were not paid for any on-call time unless (1) an alarm or other circumstances required them to investigate a disturbance, or (2) they waited for, or had been denied, a reliever. They were generally paid for the actual time spent investigating disturbances, and, if an investigation took three or more hours during on-call time, they were paid for the full eight hours.

CPS guards filed two class actions in 2008, alleging that CPS’s on-call compensation policy violated California’s minimum wage and overtime requirements. The trial court, after consolidating the cases and certifying the class, sided with the guards, concluding that CPS was required to compensate guards for *all* on-call time, whether during the 16-hour weekday shifts (patrol for eight hours and on call for eight hours) or the 24-hour weekend shifts (patrol for 16 and on call for eight hours). CPS appealed.

### The Appellate Court Decision

The Court of Appeal affirmed the trial court’s decision in part, agreeing that CPS had to pay for the eight hours of on-call time during the 16-hour weekday shifts, but it reversed the trial court regarding the 24-hour weekend shifts. There, the Court of

Appeal held that California law incorporated the federal regulation on this issue. As a result, the Court of Appeal held that CPS could exclude up to eight hours as uncompensated time for guards who worked 24-hour shifts, so long as the sleeping time was uninterrupted and the guards had signed an agreement stating that the time would not be compensated. Both parties then petitioned the California Supreme Court for review.

## The California Supreme Court Decision

The Supreme Court agreed with the Court of Appeal that, during weekday shifts where guards were on patrol for eight hours and on call for eight hours, CPS was required to compensate them for the eight hours of on-call time. Focusing on CPS's degree of control over the guards during the on-call time, the Supreme Court noted that the guards were required to reside in trailers on the worksite and to spend on-call hours in their trailers or elsewhere on the worksite. In addition, the guards were obliged to respond, immediately and in uniform, if they were contacted by a dispatcher or became aware of suspicious activity. Guards could not easily trade on-call responsibilities, and even if relieved, guards were subject to recall and could be no more than 30 minutes from the site. Restrictions were also placed on nonemployee visitors, children, and pets.

The Supreme Court also agreed with the Court of Appeal that the on-call time primarily benefited CPS, as CPS's business model is based on providing an "active" security presence in the mornings and evenings when workers arrive and depart the worksite and a more passive, yet still deterrent, presence on nights and weekends.

The Supreme Court rejected CPS's reliance on a federal regulation—which recognizes that an employee who resides on the employer's premises "is not considered as working all the time he is on the premises." The Supreme Court held that while "[f]ederal regulations provide a level of employee protection that a state may not derogate," "California is free to offer greater protection." The Supreme Court further held that absent "convincing evidence" of a legislative intent to adopt the federal standard for determining whether time is compensable under state law, "we decline to import any federal standard."

The Supreme Court reversed the Court of Appeal on the issue of whether CPS could exclude from payment up to eight hours of uninterrupted sleep time during the 24-hour weekend shifts. The Supreme Court held that *all* on-call time was compensable, and that CPS could not rely on a federal regulation that permits the exclusion of up to eight hours of sleep time from employees' 24-hour shifts. Again, the Supreme Court ruled that California courts should not incorporate a federal standard concerning what time is compensable absent "convincing evidence" of a legislative intent to adopt the federal standard. The Supreme Court found no intent by the California Industrial Welfare Commission to permit the exclusion of eight hours of sleep time from compensable hours for the security guards, and therefore declined to follow the relevant federal regulation. The Supreme Court brushed aside prior favorable Court of Appeal authority that did follow the federal standard.

## What *Mendiola* Means for Employers

*Mendiola* reminds employers that California employment law is often peculiar from the standpoint of one familiar with federal employment law. In this instance, the California Supreme Court has told employers operating in California that sometimes they must pay employees for their sleeping time. Note, though, that *Mendiola*'s definition of "hours worked" does not apply to industries where California law does expressly allow employers to exclude sleep time from employees working 24-hour shifts.

But *Mendiola* will also have broader implications as well. The California Supreme Court emphatically has held that state wage and hour law does not import any federal standard absent "convincing evidence" of a legislative intent to do so, even where federal and California law share a common purpose or otherwise appear similar. *Mendiola* therefore may portend additional challenges to judicial interpretations of California's wage and hours laws that have before now relied on federal standards.

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