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Management Alert

California Supreme Court Defines "Day of Rest" Requirements

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Seyfarth Synopsis: *In* Mendoza v. Nordstrom, Inc.*, the Supreme Court resolved three unsettled questions concerning how to read California's "day of rest" statutes: (1) Employees are entitled to one day of rest during each workweek, as opposed to one day of rest in every seven on a rolling basis. (2) An employer satisfies the "six hours or less" exception to the "day of rest" requirement only if every daily shift in a given workweek is six or fewer hours. (3) Employers cannot coerce employees to forgo a day of rest, but they will not face liability if an employee chooses to work seven straight days in a single workweek.*

The Facts

Chris Mendoza and Megan Gordon were retail employees. Mendoza was a barista and later a sales representative. Gordon worked as a sales associate. Both employees occasionally were asked to fill in for another employee, resulting in them working more than six consecutive days. During the weeks this occurred, some of their shifts were six hours or less.

The Lower Court Decisions

The employees sued in federal district court for alleged violations of California Labor Code Sections 551 and 552. These sections require employers to provide employees "one day's rest" in seven days, and prohibit employers from "causing" employees to work more than six days in seven. Labor Code Section 556 provides an exception to these "day of rest" requirements "when the total hours of employment do not exceed 30 hours in any week or six hours in any day thereof."

When the district court rejected these claims, the employees appealed. The Ninth Circuit, unsure how to interpret the statute, asked the California Supreme Court to resolve three unsettled questions:

1. Is the "day of rest" calculated by the seven-day workweek, or does it apply on a rolling basis to any seven-consecutive-day period?

2. Does the Section 556 exception apply so long as an employee works six hours or less on at least one day of the applicable workweek, or does it apply only when an employee works no more than six hours on each and every day of the workweek?

3. What does it mean for an employer to "cause" an employee to go without a day of rest?

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The California Supreme Court Decision

The Supreme Court issued a unanimous decision that, on the whole, was favorable to the employer's position. As the decision adds clarity to the "day of rest" requirements, employers should be better apply to comply with them than before the Supreme Court ruled.

First, the Supreme Court, rejecting the employees' contention, held that a day of rest is guaranteed for each seven-day employer-established workweek, not for any "rolling" seven-day period. In reaching this result, the Supreme Court concluded that "the Legislature intended to ensure employees … a day of rest each week, not to prevent them from ever working more than six consecutive days at any one time." Thus, periods of more than six consecutive days of work that stretch across more than one workweek are not per se prohibited. The Supreme Court further clarified that rest days "need not fall on every seventh day and can be spaced out differently in a calendar month, so long as the number of rest days received by the employee amounts to the number of calendar days divided by seven."

Second, the Supreme Court clarified that the "six hour" exception applies only when an employee works no more than 30 hours in the workweek and no more than six hours on each day of the workweek.

Third, the Supreme Court, picking a middle ground between the opposing contentions of the parties, defined what it means for an employer to "cause" its employees to work more than six days in seven. The Supreme Court explained that "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." But an employer is not liable simply because an employee chooses to work a seventh day.

According to the Supreme Court, an employer "causes" an employee to go without a day of rest when it induces the employee to forgo an entitled day of rest. "An employer is not, however, forbidden from permitting or allowing an employee, fully apprised of the entitlement to rest, independently to choose not to take a day of rest." In other words, employers cannot coerce employees to forgo a day of rest, but they will not face liability if an employee, who is aware of the rest-day requirements, nonetheless chooses to work seven days in a row.

What *Mendoza v. Nordstrom, Inc*. Means for Employers

Employers should carefully review their scheduling practices to assess whether they have employees (exempt and non-exempt) working periods of seven consecutive days or more. Employers should also ensure that their employment policies notify employees of their right to a "day of rest" so they can establish that an employee made an informed decision to forgo a day of rest. Finally, employers should consider obtaining a written waiver from an employee before agreeing to allow the employee to forgo a day of rest in a given workweek.

Of more general interest, the Supreme Court made three observations regarding the interpretation of the California Labor Code that could be welcome to employers in future cases. First, in adopting the workweek as the framework for counting the seven days, the Supreme Court noted that this method would be the one most congenial to an employer's administration of time records. Second, in determining the scope of the statute, the Supreme Court acknowledged that the relevant sections can trigger criminal penalties and for that reason should be interpreted with special care. Third, the Supreme Court rejected the employees' ambitious argument that the Labor Code should always be interpreted in such a way as to maximize liability. The Supreme Court recognized that an expansive interpretation is improper when the legislative intent indicates a narrower reading of the statute.

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