

California Supreme Court Targets Meal and Rest Premium Pay Practices

The Ruling

On July 15, 2021, the California Supreme Court ruled that meal, rest, or recovery period premium payments must be made at the “regular rate of pay” that is used for overtime, **not** the employee’s base hourly rate.

Background

If a California employer does not provide a non-exempt employee with a compliant meal period(s) in a given workday, that employee is owed one additional hour of pay (often called a premium payment). Rest breaks and recovery periods violations also require an additional hour of pay per day. According to the Labor Code, the one hour premium payment must be at the employee’s “regular rate of compensation.” Left unaddressed was the question whether “regular rate of compensation” for such premium payments was intended to have the same meaning as “regular rate of pay” for overtime purposes. The regular rate of pay is calculated using not only hourly wages but also any nondiscretionary payments for work performed by the employee, such as bonuses or commissions. These nondiscretionary payments must be included in the employee’s compensation when determining the employee’s regular rate of pay for overtime.

In *Ferra v. Loews Hollywood Hotels, LLC*, the California Supreme Court finally established that these terms have the same meaning and therefore, the calculation of premium pay for a noncompliant meal, rest, or recovery period, just like the calculation of overtime pay, is made at the regular rate of pay. It must include not only hourly wages but also any nondiscretionary payments for work performed by the employee, such as bonuses or commissions.

Is the decision retroactive?

Yes, the court also held that the decision is retroactive. Any wage and hour compliance issue in the state generally implicates a four year statute, so any payroll audit should look back four years.

The Upshot

Employers should confirm that they are paying the regular rate of pay for all meal, rest, and recovery period premiums. California employers simply cannot afford to ignore the fact that even minor errors in payroll practices multiply significantly in class action lawsuits or representative actions seeking penalties under the Private Attorney General Act (PAGA), both of which carry significant penalties. As always, employers must take affirmative steps to ensure that their payroll policies and practices comply with all California wage and hour laws.



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