Labor and Employment Alert: California Supreme Court Grants Employers 'Day Of Rest' From Class Actions

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California's Labor Code ensures employees a "day of rest" by providing that every employee "is entitled to one day's rest therefrom in seven" and that "no employer of labor shall cause his employees to work more than six days in seven." Recently, in *Mendoza v. Nordstrom, Inc.*, the California Supreme Court clarified these ambiguous provisions. Much to the relief of California employers, the Court unanimously held that the day of rest refers to a defined workweek basis, meaning that employers must provide one day of rest during each calendar week (as opposed to one day of rest for every rolling seven days). The Court further explained that employers may permit employees to voluntarily choose to work on their day of rest without violating the Labor Code.

Background

Mendoza worked as an hourly employee for Nordstrom. On three occasions, he was asked by his supervisor or coworker to fill in for another employee, which resulted in Mendoza working more than six consecutive days. Each time, some of his shifts lasted six hours or less. Mendoza filed a class action lawsuit in state court against Nordstrom alleging that Nordstrom had violated California Labor Code by failing to provide him statutorily guaranteed days of rest. The case eventually wound up before the Ninth Circuit Court of Appeals. The Ninth Circuit found the entire statutory scheme to be ambiguous, and so asked the California Supreme Court to resolve the following three questions as to the day of rest statutes.

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

The Court first analyzed whether the day of rest protection applies on a week-by-week basis or on a rolling basis. Under the weekly interpretation, the calendar is divided into seven-day blocks, which ensure at least one day of rest in each block. However, an early day of rest in one week and a late day of rest in the next may lead to an

employee working seven or more days in a row. Under the rolling interpretation, the day of rest applies on an ongoing day-by-day basis. This means that an employee who has worked the preceding six days in a row is entitled to rest on the next day. The Court concluded that the statutes "are most naturally read to ensure employees at least one day of rest during each week, rather than one day in every seven on a rolling basis." Thus, a day of rest is guaranteed for each workweek, and periods of more than six consecutive days of work that stretch across more than one workweek are not per se prohibited.

Does the exemption for those employed six hours or less per day apply so long as an employee works six hours or less on at least one day of the week, or does it apply only when an employee works no more than six hours on each and every day of the week?

Under the Labor Code, the day of rest requirements do not apply when the total hours of employment do not exceed 30 hours in any week or 6 hours in any one day of the week. Nordstom argued this means an employee does not receive a day of rest if ***either*** the 30-hour week ***or*** 6-hour day provision applies. However, the Court found the elimination of seventh-day-rest protection applies only to employees who ***both*** work no more than six hours each ***and*** every day of the given week. The Court found this to be a narrow exception that for only those "who never exceed 6 hours of work on any day of the workweek. If on any one day an employee works more than 6 hours, a day of rest must be provided during that workweek."

What does it mean for an employer to "cause" an employee to go without a day of rest: to force, coerce, pressure, schedule, encourage, reward, permit, or something else?

Finally, the Court addressed the prohibition against an employer "causing" its employees to work more than six days in seven. The 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. 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." An employer "causes" its 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."

Conclusion

In California, overtime, minimum wage, wage statements, and overtime/minimum wage exemptions all hinge on a defined workweek. *Mendoza* further solidifies the week-by-week approach and provides additional certainty for employer scheduling practices. At the same time, while the Court provided some guidance on interpreting Labor Code §§ 551, 552, and 556, employers face continued uncertainty as to the boundaries between inducement and independent choice. For example, can an employer apprise employees of their day of rest right but then ask for volunteers? Contact your Vorys lawyer if you have questions about the day of rest requirement or the state's myriad wage-hour laws.