



Rest Assured - California Supreme Court Clarifies What 'One Day's Rest in Seven' Means

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In *Mendoza v. Nordstrom, Inc.*, the California Supreme Court unanimously ruled that employees are guaranteed one day of rest for each defined workweek. However, an employee may voluntarily decide to work more than six days and not to take a day off.

California Labor Code sections 551 and 552 require that employers give their employees one day's rest in seven, and prohibit employers from causing their 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. Notwithstanding that these laws were enacted long ago, uncertainty remained until now. The Court's decision clarifies a significant ambiguity for employers regarding the obligation to provide employees with their statutorily mandated day of rest.

Background

The case involved two former Nordstrom sales employees who claimed that Nordstrom violated the California Labor Code when it forced them to work more than six consecutive days, and on some of those days, more than six hours per shift without providing the employees statutorily guaranteed days of rest. The case reached the U.S. Ninth Circuit Court of Appeals; however, the Ninth Circuit recognized that it needed guidance from the California Supreme Court regarding the interpretation of Labor Code sections 550-558.1 – the so-called day of rest statute.

Specifically, the Ninth Circuit asked the California Supreme Court for clarification on the following three questions:

(1) Is the required day of rest calculated by the workweek, or is it calculated on a rolling basis for any consecutive seven-day period?

(2) Does the section 556 exemption apply so long as an employee works six hours or less on at least one day of the applicable week, or does it apply only when an employee works no more than six hours on each and every day of the week?

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

Question #1: One Day of Rest Is Guaranteed for Each Workweek

The Court held that a day of rest is guaranteed for each seven-day employer-established workweek, not on a rolling seven-day period basis: A day of rest is guaranteed for **each workweek**. Periods of more than six consecutive days that stretch across more than one workweek are **not per se** prohibited.

The Court further explained that an employee must receive the equivalent to one day's rest in seven over the course of a calendar month. This means that seventh-day premium pay is only available for employees who must work every day of an employer's established, regularly occurring workweek, and was thus not available on a rolling basis for any seventh consecutive day of work.

Thus, if an employer's workweek begins on Sunday and ends on Saturday and the employees are scheduled to work Monday and the next 11 days for a total of 12 consecutive days (Monday – Saturday and Sunday – Friday), the employer is in compliance with the statute. However if the Court had held that the statute applied to a rolling seven-day period, the employer would be in violation of the law.

Question #2: Employees Get a Day of Rest for Working More than Six Hours on Any One Day of a Workweek

The Court ruled that the elimination of the seventh-day rest protection applies only to employees who work no more than six hours each and every day of the week.

Question #3: An Employer Should Not Encourage An Employee to Forego a Rest Day

The Court held that an employer causes an employee to work more than six days in seven if it encourages the employee to do so. In so holding, the Court stated that employers are obligated to apprise their employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality as to the exercise of that right. The Court also recognized that employees may still chose to work a seventh day, and the employee's fully informed choice would not create liability for the employer.

What This Means for Employers

Employers should designate and ensure that the parameters of their workweek are communicated to employees. If an employer does not specifically designate a workweek, the California Division of Labor Standards Enforcement will presume a workweek of 12:00 a.m. Sunday to 11:59 p.m. Saturday.

Employers should also take steps to ensure employees are informed of their entitlement to one day's rest in each workweek. As long as employees are so apprised, they can be given the opportunity to work more than six days a week.

Caveat: If an employee does voluntarily decide to work seven consecutive days in a workweek, increased overtime pay requirements are triggered: time and one half for the first eight hours worked on the seventh consecutive day of the workweek and double time for hours worked beyond eight

How Nossaman Can Help

Nossaman can assist employers in reviewing/auditing employers' current wage and hour policies and procedures to ensure compliance. Nossaman provides client-focused, high caliber legal services that exceed our clients' expectations while staying within their legal budgets. Our employment attorneys provide litigation, counseling, advice, and training services to private and public companies and public entities throughout California, as well as meeting their out-of-state-needs. The scope of our representation runs the full gamut from prosecuting misappropriation of trade secrets to defending wrongful termination claims (discrimination/harassment/public policy) and wage and hour class actions. We stay on top of emerging employment issues such as e-discovery, privacy rights, cybersecurity, data breach and workplace violence and are well prepared to counsel our clients on how to address and control related issues.