

California Employers Will Need to Change How They Calculate Meal and Rest Period Premiums Following California Supreme Court Decision

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California law generally requires employers to pay non-exempt employees a premium of one hour of pay for non-compliant meal and rest periods. Employers have typically paid such premiums by using the employees' standard hourly rates. A new California Supreme Court decision requires employers to pay premiums at a higher rate when employees receive nondiscretionary compensation. This change in the law not only will require employers to adjust how they calculate meal and rest period premiums going forward, but it also exposes some of them to litigation for their past practices if they did not previously pay at the higher rates – despite the fact that, before this new decision, they had no reason to believe that premiums should be paid at those higher rates.

On July 15, 2021, in [*Ferra v. Loews Hollywood Hotel, LLC*](#), the California Supreme Court held that, when an employer is obligated to pay a meal or rest period premium for failing to provide a compliant meal or rest period, that premium must be paid at the “regular rate of pay,” as that term of art is generally used for overtime purposes, rather than the employee's base rate of pay. The “regular rate of pay” generally takes into account all nondiscretionary forms of wages, including hourly pay, shift differentials, piece-rate, commissions and incentive/production bonuses, among other forms.

In reliance on a number of federal decisions, many employers in California have understandably paid these meal or rest period premiums based on employees' base rates of pay. The California Supreme Court has now made clear that such a practice does not comply with the Labor Code.

Equally significant, the *Ferra* decision appears to apply retroactively, meaning that many California employers are likely to face a new wave of class actions and Private Attorneys General Act lawsuits alleging that their past practices did not comply with the *Ferra* standard.

For employers that do not provide any form of compensation beyond an employee's hourly wages, the *Ferra* decision should not affect their operations. In those circumstances, the “regular rate of pay” would always be equal to the base rate of pay.

Following *Ferra*, however, entities doing business in California that provide some form of

compensation beyond hourly wages will want to review their payroll practices and make necessary adjustments to ensure that that meal and rest period premiums are calculated at the correct amounts.

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