

California Supreme Court Adopts New Premium Pay Calculation for Meal and Rest Break Violations

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California employers will need to reconsider the way they calculate premium payments for meal and rest break violations following a recent decision of the California Supreme Court.

Under California Labor Code section 226.7, if an employer does not provide an employee with a compliant meal or rest break, the employer must pay the employee a premium payment of one hour of pay at the employee's "regular rate of compensation." In *Ferra v. Loews Hollywood Hotel, LLC*, the issue before the California Supreme Court was whether that premium payment should be calculated using the employee's base hourly rate or whether the employer must use the employee's "regular rate of pay."

Employers have long argued that the term "regular rate of compensation" used in section 226.7 is equivalent to an employee's base hourly rate. The Plaintiffs in *Ferra*, however, argued that the term should be interpreted to have the same meaning as the phrase "regular rate of pay" used in the overtime provisions of California Labor Code section 510. Under California law, "regular rate of pay" is a term of art that includes non-discretionary payments, such as incentive bonuses, commissions, piece-rate compensation or shift differential pay, in addition to an employee's base hourly rate.

The California Court of Appeal and several federal district courts previously held that the term "regular rate of compensation" in the law applying to meal and rest breaks, meant an employee's base hourly rate and did not have the same meaning as the phrase "regular rate of pay."

The California Supreme Court disagreed, however, holding that the terms "regular rate of pay" and "regular rate of compensation" are synonymous. The key phrase, according to the court, is "regular rate" and it found the words "compensation" and "pay" to be interchangeable. The Court held that there was no indication the legislature intended the words to have different meanings.

In addition, unmoved by the potential for significant impact on employers, the California Supreme Court held that its decision applies retroactively.

Implication for Employers

As a result of the court's holding, employers in California should review their current pay practices and take steps to modify pay formulas as needed to calculate meal and rest break premiums at an employee's regular rate of pay. Also, because premium payments are often due before earned incentive compensation is awarded and is capable of being calculated, employers will need to consider implementing a process of retroactively making "true up" payments at the regular rate of pay for break premiums previously paid, just as they do for overtime payments. Employers also should review their handbooks and meal and rest break policies to ensure they reflect payment of meal and rest break premiums at the regular rate of pay in line with the Court's recent decision.

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