California Court of Appeal Provides Guidance Regarding Reporting Time and Split Shift Pay

By: Jennifer Brown Shaw and Timothy L. Reed

Introduction

The California Industrial Welfare Commission's (“IWC”) wage orders describe the circumstances under which California employers must pay employees for “reporting time” and “split shifts.” A “split shift” is “a work schedule that is interrupted by non-paid non-working periods established by the employer,” other than meal or rest breaks. “When an employee works a split shift, one . . . hour’s pay at the minimum wage shall be paid in addition to the minimum for that workday.”

“Reporting time” pay describes the situation where “an employee is required to report for work and does report, but is not put to work or is furnished less than half [the] employee’s usual or scheduled day’s work.” The employer must pay the employee “half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than minimum wage.” If an employee is required to work a second time in a workday (i.e., work a split shift), but works less than two hours, his or her employer must pay the employee for two hours “at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

These provisions have not attracted much scrutiny until recently. So, employers relied on informal advice from the state Labor Commissioner and experienced employment lawyers. But in Price v. Starbucks Corp. and Aleman v. AirTouch Cellular, the California Court of Appeal interpreted the above provisions of the IWC wage orders as applied to termination meetings and scheduled staff meetings.

Reporting Time Pay for Termination Meeting

Drake Price worked briefly for Starbucks. On November 11, 2007, Starbucks removed Price from the schedule after he did not report for a shift. Price’s manager left him a voice message instructing him to come into work for “a talk” on November 16, 2007. On November 16, Price and his manager had a 45-second meeting during which the manager terminated Price’s employment. The manager gave Price a paycheck for work performed prior to that date and another paycheck consisting of two hours of reporting time pay for the termination meeting.

Price filed a class action lawsuit against Starbucks, who appealed to the California Court of Appeal.

The Court of Appeal held that Starbucks’ reporting time payment was consistent with the applicable wage order. The court reasoned that the reporting time provision’s “primary purpose” is “to guarantee partial compensation for employees who report to work expecting to work a specified number of hours, [but] are deprived of that amount because of inadequate scheduling or lack of proper notice.” Price “did not report to work with the expectation that he would work a scheduled shift, but rather was scheduled to attend a meeting for an unspecified number of hours.” Accordingly, the court rejected Price’s argument that he should have been paid for 3.3 hours of work.

Split Shifts and More on Reporting Time

In Aleman, former employee Daniel Krofta worked for AirTouch as a retail sales/customer service representative. AirTouch required Krofta and other employees to occasionally attend scheduled mandatory meetings on days on which they were not otherwise scheduled to work, or were scheduled for a shift later in the day. Whenever Krofta attended a meeting, the meeting always lasted at least half the time the employer...
had allotted for it. Similarly, when he worked shifts later in the day, those shifts always lasted at least half the time scheduled. AirTouch did not pay Krofta split shift or reporting time compensation. Krofta earned between $10.58 and $11.11 during the applicable time period.

Krofta and several other former employees filed a class action lawsuit against AirTouch in California state court. They alleged that AirTouch violated the applicable wage order by not providing split shift or reporting time pay.

The Court of Appeal held that the trial court properly granted summary judgment to AirTouch regarding Krofta's reporting time claim. The Court reasoned that “the right to at least two hours of wages” is dependent on the employee not being “put to work or . . . furnished less than half said employee's usual scheduled day's work.” For Krofta, “[e]ach period of work at issue, including meetings, was scheduled . . . and Krofta always worked at least half the duration of each period.” The court distinguished this situation from the one in Price, noting that “unlike the 45-second talk in Price, the AirTouch meetings could only be considered scheduled shifts of work.” The court also upheld the trial court's ruling that AirTouch did not need to compensate Krofta for working split shifts. The court reasoned that a “split shift” premium is a form of minimum wage. As long as the employee earns at least minimum wage, plus the equivalent of another hour's pay at minimum wage, the wage order's split shift minimum would be satisfied. In Krofta's case, the court decided that “additional compensation was not owed because every time Krofta worked a split shift, she was paid a total amount greater than the minimum wage for all hours worked, plus one additional hour.” AirTouch's approach was consistent with the applicable wage order, which “provides that one hour at the minimum wage shall be paid in addition to the minimum wage for that workday” – “not the regular wage for that workday.”

Tips for Employers

These recent decisions highlight the unique nature of California wage-hour laws, and why it is so important for employers to stay abreast of changes in the law. Interestingly, these decisions also make it clear that there are opportunities to challenge “conventional wisdom” or even the Division of Labor Standards Enforcement’s “enforcement position” as articulated in its opinion letters and Manual.

Reprinted by permission of The Daily Recorder.