Employment Law Update

May 2017

CALIFORNIA SUPREME COURT RESOLVES "DAY OF REST" LAW AMBIGUITIES

Last week in ***Mendoza v. Nordstrom***, the California Supreme Court clarified what it described as "manifestly ambiguous" Labor Code provisions pertaining to when employees are entitled to a "day of rest." The Court answered three unsettled questions and provided much needed guidance for employers on scheduling employees.

KEY HOLDINGS:

1. *When is a "day of rest" required*? The Court held that employees in California are entitled to "day of rest" for each "workweek," as defined by the employer (e.g., Monday through Sunday), rather than one day of rest in every seven on a rolling basis.

   PRACTICAL IMPLICATIONS: Employees may be scheduled to work 12 consecutive days over two separate workweeks without violating the day of rest requirement. For example, an employer that defines a workweek as Monday 12:01 a.m. through Sunday midnight can schedule its employees to work 12 consecutive days as follows:

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Week 1	Day-Off	Workday	Workday	Workday	Workday	Workday	Workday
Week 2	Workday	Workday	Workday	Workday	Workday	Workday	Day-Off

   In this example, even though the employee works 12 consecutive days, the employee receives one day off in each workweek: Week 1 (Monday) and Week 2 (Sunday). This satisfies the day of rest requirement. Employers should ensure that their workweeks are clearly defined in their employee handbook or elsewhere.

2. *Is there an exception to the day of rest requirement for part-time employees?* The Court held that part-time employees who work no more than 30 hours in a workweek and never exceed six hours of work on any day of the workweek are exempt from the day of rest requirement.

PRACTICAL IMPLICATIONS: Employers can schedule part-time employees who work no more than 30 hours in a workweek and shifts of six hours or less each day to work seven days a week. Employers that rely on this exception will need to ensure that employees never work more than six hours in a workday. If on any one workday an employee works more than six hours, a day of rest must be provided during that workweek.

3. *Can an employee waive his or her right to a day of rest?* The Court held that an employer cannot "cause" an employee to forgo a day of rest to which the employee is entitled. An employer is not, however, forbidden from allowing an employee, fully apprised of the entitlement to rest, to independently choose not to take a day of rest. According to the court, "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."

   PRACTICAL IMPLICATIONS: The Court did not address what conduct or statements by an employer could be deemed to "cause" an employee to forgo a day of rest. Whether an employer caused an employee to forgo a day of rest, or whether the employee independently chose not to take the day of rest, will in many cases be a factual question. Employers can help resolve that question in their favor by having employees who choose not to take a day of rest sign a waiver that the employee was apprised of the entitlement to a day of rest but chose not to take it. Employers should also add language to their employee handbooks stating that employees are entitled to one day of rest each workweek, and requiring that employees report to management any instances in which the employee is denied or otherwise unable to take a day of rest each workweek.

Please feel free to contact any member of Rutan & Tucker's Labor and Employment Department if you have questions about this new, important case.

Edson McClellan

Radhika Sood