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EMPLOYMENT LAW UPDATE

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JUDICIAL

California

California Supreme Court Clarifies the Requirements and Protections Afforded by "Day of Rest Statutes"

Pursuant to the California Labor Code's "day of rest statutes" (Cal. Lab. Code sections 550-558.1), an employee cannot be required to work more than six consecutive days, unless that employee works fewer than 30 hours in a week and no more than six hours in a day during that span. In *Mendoza v. Nordstrom*, the California Supreme Court looked more closely at this legal standard to clarify that employers are only bound to abide by these provisions during each workweek, thereby alleviating the potential scheduling difficulty associated with coordinating compliance across multiple workweeks.

Christopher Mendoza and Meagan Gordon (collectively, "Plaintiffs") were employed as retail associates by Nordstrom, a high-end retail clothing chain. During the course of their employment, Plaintiffs regularly worked more than six consecutive days, during which time they worked shifts which occasionally (albeit infrequently) lasted longer than six hours. After their employment ended, Plaintiffs filed suit against Nordstrom, alleging that the company's scheduling practices violated California's day of rest statutes.

While the matter was initially filed in federal court and appealed to the Ninth Circuit Court of Appeals, it was ultimately appealed to the California Supreme Court, which was asked to opine on three main issues.

First, the Court examined whether the day of rest requirement applies only to an employer-defined workweek or instead is a rolling policy that stretches across any seven (or more) consecutive day period. The Court issued a ruling favoring employers, explaining that an employer need only schedule a day of rest during one day of every defined workweek. Scheduling an employee to work more than six consecutive days does not create a violation as long as at least one day per workweek is left unscheduled.

Second, the Court evaluated whether the exemption for workers employed six hours or fewer in a day applies when an employee works a single day of six hours or fewer during a consecutive day span or, instead, only when all shifts in a span are six hours of fewer. The Court held that, for the exemption to apply, *every* shift in a consecutive day span must last fewer than six hours. While this clarification means that employees can be scheduled to work short shifts every day

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of a workweek, even a single shift lasting more than six hours is enough to create a violation.

Third, the Court clarified the prohibition against employers "causing" an employee to work more than six consecutive days in a workweek. In its ruling, the state's highest Court explained that an employer is not permitted to proactively schedule, or otherwise *require*, an employee to work more than six days in a workweek. Despite this, there is nothing in the statute that precludes an employee from electing to amend his/her schedule to include a seventh consecutive day.

Mendoza provides much needed clarification as to a series of statutes that had vexed California employers, particular in the retail sector, for quite some time. While employers can now avoid the headache of avoiding scheduling employees for more than six consecutive days over multiple workweeks, they must also ensure that employees do not work more than six hours in a day or 30 hours in a week in which more than six days are scheduled.

Court of Appeal Holds Equitable Estoppel Permits Non-Signatories to Arbitration Agreements to Compel Arbitration of Statutory Claims

In *Garcia v. Pexco, LLC*, a California Court of Appeal grappled with the following question: can a defendant that is not a signatory to an enforceable arbitration agreement nonetheless compel arbitration? According to a panel of appellate judges: yes, if the claims against the non-signatory are sufficiently intertwined with the claims against the signatory defendant. In this case, employee Narciso Garcia ("Garcia") sued his direct employer, staffing agency Real Time Staffing Services, LLC ("Real Time") as well as the company to which he was assigned to work, Pexco, LLC. Garcia alleged that Real Time and Pexco were joint employers who violated various portions of the Labor Code.

When Garcia was hired by Real Time, he signed an employment application that contained an arbitration provision. The provision required Garcia to arbitrate any disputes arising out of his employment with Real Time, including claims regarding wages, vacation and sick time, overtime pay, and state and federal employment laws and regulations. Pexco was not a signatory to the arbitration provision. After Garcia filed suit against Real Time and Pexco, both companies moved to compel arbitration based on the employment application. The trial court granted both motions. Garcia appealed the decision to grant Pexco's motion to compel, arguing that Pexco could not enforce the arbitration provision because it was not a signatory to the agreement. The Court of Appeal disagreed.

The Court of Appeal explained that, pursuant to the doctrine of equitable estoppel, a non-signatory defendant may invoke an arbitration provision to compel arbitration when the causes of action against the non-signatory are "intimately founded in and intertwined with" the underlying obligations of the arbitration contract. Garcia unsuccessfully argued that his claims against Pexco were not sufficiently "intertwined" with the underlying arbitration provision because he was not seeking to enforce the terms and conditions of his employment contract, but was rather asserting only causes of action based on the Labor Code. In other words, because his claims were based on statutory violations and did not sound in contract, his claims could not be part of the arbitration agreement. The appellate

court rejected this argument: a claim need not be "contractual" in nature to arise out of a contract, especially where, as here, the arbitration contract expressly noted that statutory wage claims were arbitrable. Moreover, Garcia's claims against Pexco were "based on the same facts and are inherently inseparable" from his claims against Real Time: every cause of action was asserted against both companies as joint employers, the causes of action were premised upon the same factual allegations, and no distinctions were drawn with respect to the companies. Therefore, the Court of Appeal determined that Pexco could compel arbitration of Garcia's claims under the equitable estoppel doctrine.

The *Garcia* decision should come as good news to companies that retain temporary employees through staffing firms—even if such companies do not require temporary workers to sign arbitration agreements, companies may nonetheless be able to compel arbitration based on the staffing firm's arbitration contracts.

Court of Appeal Holds That While Some "On Call" Meal Periods May Be Lawful, "On Call" Rest Breaks Are Not

A California Court of Appeal ruled in *Bartoni v. American Medical Response West* that workplace policies requiring employees to take rest breaks while remaining "on call" were not compliant with the California Labor Code. This decision clarified the previously unresolved question as to whether legally approved allowances for "on call" meal periods extend to rest breaks, finding that they do not.

Laura Bartoni and three other former employees (collectively, "Plaintiffs") of American Medical Response West ("AMRW") filed a class action lawsuit that asserted systematic violations of their rights to take meal and rest breaks, along other claims not addressed in the appeal. Plaintiffs asserted three major claims: (1) a class claim under the Labor Code alleging meal and rest violations; (2) a class claim under the Unfair Competition Law relating to the alleged meal and rest break violations; and (3) a representative claim for penalties under the Private Attorneys General Act ("PAGA"). The primary theory asserted by the Plaintiffs was that the AMRW class members were required to take the meal and rest breaks they were entitled to receive while remaining on call. Plaintiffs claimed that because the class members were required to be available to respond to any emergencies that arose (even if none did), the employees were not relieved of all duties as required under the Labor Code. Plaintiffs claimed that this resulted in a consistent set of violations across the entire class.

The trial court denied Plaintiffs' class certification motion on the grounds that the requisite commonality among the potential class members did not exist. AMRW showed that there was no single policy that dictated how meal and rest breaks were taken, and the different positions and regions gave rise to the observance of different practices. Moreover, the trial court confirmed that by statute, a policy requiring employees to take "on call" meal periods could be lawful under the applicable wage order so long as the meal was not uninterrupted. The trial court extended this holding to rest breaks despite the absence of a firm legal basis to do so. Plaintiffs appealed the trial court's denial of class certification and its ruling as to "on call" rest breaks.

The Court of Appeal reversed the trial court's ruling as to the rest break policy. Citing the 2016 California Supreme Court decision *Augustus v. ABM Security Services, Inc.*, the Court of Appeal noted that because the required rest periods are only ten minutes, employees could not realistically be relieved of their duties. Virtually any exercise by the employee of their right to take a break would violate the terms of their "on call" arrangement. In contrast, "on call" meal periods of thirty minutes could potentially be lawful under certain circumstances if the meal period was uninterrupted by work, due to the greater amount of break time available to the employee. Accordingly, the Court of Appeal vacated the trial court's denial of class certification as to the rest break policy, and remanded the case to the trial court for further proceedings.

California employers are confronted daily with maintaining the balance between efficient staffing and the restrictions imposed by the California Labor Code. *Bartoni* highlights the need for extreme caution when contemplating a variance from standard meal and rest break procedures. Without certainty as to how a novel meal and rest policy will operate and the legality of that policy, employers should in most cases take the safe approach of making available all legally-mandated meal and rest breaks. In cases where this is not feasible, employers should pay the requisite missed meal- or rest-break premium.

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