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EMPLOYMENT LAW UPDATE: CALIFORNIA SUPREME COURT CLARIFIES "DAY OF REST" RULES

The California Labor Code requires companies to give employees at least 1 day of rest out of 7 and prohibits companies from “causing” employees to work more than 6 days out of 7. The code provides an exception to these rules when an employee works 30 hours or less in the week or less than 6 hours per day in the week. On Monday, May 8, 2017, in the matter of **Mendoza v. Nordstrom, Inc.**, the California Supreme Court provided clarification on the following questions: (1) are the 6 days calculated on a rolling basis or on the employer’s defined “workweek,” (2) to qualify for the exception, does every day worked in the week have to be for less than 6 hours, and (3) what does it mean to “cause” an employee to work more than 6 days out of 7. The California Supreme Court ruled as follows:

1. The 6 consecutive days have to be in the same “workweek,” as defined by the employer, in order to trigger the 1 day of rest. For example, if the employer’s defined workweek is Sunday through Saturday, the 6 consecutive days have to be between Sunday and Saturday of the same workweek. As such, an employee can be scheduled to work more than 6 consecutive days without triggering the “day of rest” requirement if only some of the days are in one workweek and the rest fall into a different workweek (e.g., Thursday through Wednesday).
2. If an employee works more than 6 hours on even one day of 6 consecutive days in a workweek, a day of rest must be provided; the exception does not apply.
3. An employee can work more than 6 consecutive days in a workweek, as long as the employee is made aware of his or her right to a day of rest and the employer remains “absolutely neutral” about the employee’s choice to work more than 6 days in a row. In other words, employees can choose to work more than 6 consecutive days in a workweek as long as it’s truly a choice and the employee is aware of his or her right to a day of rest. Employers should be very clear to tell employees that working more than 6 days in a row is their personal choice and refusing to do so will not jeopardize their job or reflect negatively on them.

Takeaway:
Given the need for employers to make their employees aware of their “day of rest” rights in order for the company to avoid liability when employees voluntarily choose to work more than 6 days in the same workweek, employers should consider including language in their **employee handbooks** pertaining to “day of rest” requirements and exceptions. The issue has not come up often to date, but this California Supreme Court opinion is likely to catch the attention of employees and employee-side attorneys and may create a new wave of litigation.

If you have any questions about this or any other employment law issue, **Hoge Fenton's Employment Law Team** is here to help.

Primary Contact

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