



California Wage/Hour Update

New Ruling Makes It More Difficult To Avoid Seventh-Day Premium

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A recent California appellate decision precludes California employers from defining workweeks under a recurring work schedule that avoids payment of the "seventh day" premium. *Seymore v. Metson Marine*.

Metson Marine provided crew members and vessel operations for offshore oil recovery. Its crews operated on two-week rotational hitches, alternating between 14 consecutive workdays and 14 consecutive rest days. Each 14 consecutive workday hitch started on a Tuesday at noon and ended 14 days later on a Tuesday at noon.

The California Labor Code requires premium compensation of time and one-half of the regular rate of compensation for the "first eight hours worked on the seventh day of work in any one workweek." All hours in excess of the first eight hours are paid at double the regular rate of pay. The Labor Code defines a "workweek" as any seven consecutive days, starting with the same calendar date each week.

To avoid paying premium compensation, Metson defined its workweek as beginning on Monday at midnight and ending at 11:59 p.m. the following Sunday. Thus, with shifts beginning on Tuesday at noon, Metson employees worked 6 days in week one, seven days in week two and two days in week three. On that basis the employees were paid a single seventh day wage premium at the end of the second week.

Metson's scheduling methods were no doubt undertaken in good faith. Previous guidance by the California Labor Commissioner had suggested that employers could, in fact, avoid the seventh-day premium by such creative scheduling from week to week. But the Metson employees argued that seventh-day-premium pay must be calculated based on the fixed and regular Tuesday schedule that they were working, and that Metson's "artificial" workweek designation completely undermined the protections of the

Labor Code. The court agreed with the employees, holding that the clear intent of the Labor Code is to provide premium pay for employees who are required to work a seventh consecutive day in a fixed and regularly occurring workweek. Metson's employees should have been paid two seventh-day-premium wages when working their consecutive 14 days.

A Change Of Direction

This case follows other decisions suggesting that courts may be increasingly reluctant to sanction an employer's creative scheduling of workweeks to avoid paying premium compensation. The *Metson* decision comes on the heels of another decision concerning graveyard shifts. The decision *In re Wal-Mart Stores*, held that employers cannot count hours worked before midnight as one day and all hours worked after midnight as another day solely to elude overtime compensation.

In light of these recent decisions, employers should be sure that their workweek and workday definitions are in compliance with California law. Attempting to evade premium compensation by using a workweek or workday definition that does not line up with the pattern of regular and recurrent scheduling could expose your company to liability.

Of course, defenses to workweek definitions should still exist in cases where schedules that avoid some overtime premiums are not recurrent but vary due to changing workload demands. Because these issues can be complex, you may need to seek legal counsel to determine if your company's definition for workweeks can withstand scrutiny when viewed in light of your regular schedule.

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