

Good News for California Employers on Split-Shift and Reporting-Time Pay

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By Mark C. Gabel, Janet Grumer, and Judith Droz Keyes

Employers whose hours of operation depend on multiple or irregular shifts often wrestle with how to pay employees called into work for off-hours meetings or a short shift, or how to handle split-shift payments for employees whose schedules involve an unpaid break of more than an hour. The California Court of Appeal recently has ruled favorably for employers on both of these issues in *Aleman v. AirTouch Cellular*.

Reporting-time pay

Contrary to what had been the California Labor Commissioner's interpretation, the Court ruled that employers are not always required to pay a minimum of two hours of pay to non-exempt employees called into work on days off. Although the employer must pay at least half of what the employee was scheduled to work *that* day, it does not have to pay half (or a minimum of two hours) of the employee's usual workday. As an example, the Court of Appeal asked and answered the following question:

If an employee's only scheduled work for the day is a mandatory meeting of one and a half hours, and the employee works a total of one hour because the meeting ends a half hour early, is the employer required to pay [a minimum of two hours] reporting time pay pursuant to subdivision 5(A) of Wage Order 4 in addition to the one hour of wages?

The answer to this question is no, because the employee was furnished work for more than half the scheduled time. The employee would be entitled to receive one hour of wages for the actual time worked, but would not be entitled to receive additional compensation as reporting time pay.¹

The court distinguished the *Aleman* case from the *Price v. Starbucks* case decided in 2011, in which the Court of Appeal ruled that an employee called into work for a 45-second meeting was entitled to 2 hours of reporting-time pay. The salient difference is that in *Price*, the employee was told to come to work at an indeterminate time and for an indeterminate period, whereas in *Aleman*, the employee was asked to report at a time certain for a meeting that was scheduled to last one and a half hours. Because there was a start and end time, and the employee worked at least half of the scheduled time, no additional reporting-time pay was due.

So it is now clear that when reporting-time pay is owed because an employee works less than half of the scheduled time on a given day, the employer must pay half of the *scheduled* day's pay or, if there was no schedule, half of the *usual* day's pay up to 4 hours of pay, or 2 hours of pay if the usual or scheduled day was less than 4 hours. However, when an employee works at least half of the scheduled time on any day, no additional reporting-time pay is due, regardless of the length of time the employee is scheduled to work or whether the day is ordinarily the employee's day off.

Split-shift pay

The Court also clarified California's split-shift requirement. Employers who operate 2 or more shifts in a

workday with an unpaid break of more than an hour between them must comply with “split-shift” pay regulations — an extra hour of pay at California’s minimum wage, unless the employee earns more than an hour of extra pay at minimum wage on that workday.

To illustrate, a minimum wage employee (\$8 per hour under California law, which is what applies regardless of whether there is a higher local minimum wage) who works an 8-hour day with a split shift would be entitled to an extra \$8 for the day, for a total of \$72 for the day (\$8 x 8 hours + \$8 split shift premium). An employee who works that same shift and is paid \$9 per hour, however, would not be entitled to the split-shift premium because he has already earned at least \$72 for the day.

This ruling also narrows what the Labor Commissioner had said was the requirement.

Best practices for employers

To avoid liability for reporting-time payments, employers should schedule meetings and other short shifts for a time certain with a reasonable approximate end time. As long as the employee works half of the scheduled time, no additional reporting time pay will be due.

To avoid liability for split-shift pay, employers should make sure employees receive an extra hour of pay at California’s minimum wage, unless the employee earns more than an hour of extra pay at minimum wage on that workday.

FOOTNOTE

¹ With the exception of IWC wage orders 16 and 17, all of the California Wage Orders contain the same reporting-time pay provision.

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