

California Court of Appeal Construes Wage Order Split Shift and Reporting Time Pay Provisions in a Pro-Employer Way

December 27, 2011 by Thomas Kaufman and Jonathan Barker

On December 21, 2011, a California Court of Appeal held in *Aleman v. Airtouch Cellular* that employees were not entitled to additional "reporting time" pay when they came into work for scheduled meetings. Additionally, when the employees worked split shifts, they were entitled only to the difference between what they actually earned for the day, and what they would have earned had they been paid the minimum wage for the day plus an extra hour. This ruling is the first published California appellate court opinion to address these issues.

Daniel Krofta and Mary Katz were customer service representatives for Airtouch Cellular. These employees claimed that when they came into work specifically for a scheduled meeting that lasted less than four hours, they were entitled to a minimum of four hours of "reporting time pay." They also claimed that on days where they worked two separate shifts, they were entitled to a split-shift premium of one hour at the minimum wage, above and beyond their hourly pay. The trial court rejected both of these claims as matter of law, and the employees appealed.

The Court of Appeal also rejected these claims. In doing so, the Court noted that California's "reporting time" pay provisions apply only when an employee works less than half of the usual or the scheduled day's work. Accordingly, if an employee is scheduled to come in to work only for a one-hour meeting, the employee is not entitled to reporting time pay unless the meeting lasts less than half of the scheduled duration (i.e. less than 30 minutes). The Court distinguished this scenario from a case decided earlier this year, *Price v. Starbucks*, which held that an employee was entitled to 2 hours of reporting time pay when he was called into work for an unscheduled "talk," during

which he was promptly fired. In that case, the "meeting" had not been scheduled and was not set for a specific length. Here, because the meetings attended by Airtouch employees were scheduled at least 4 days in advance, and the meetings lasted more than half their scheduled length, employees were not owed additional reporting time pay. It is noteworthy that, in reaching this conclusion, the Court of Appeal rejected a contrary position taken by the California Division of Labor Standards Enforcement. The significance of this holding is that an employer can schedule employees to come to work solely for a short meeting, and need only pay the hours worked in the meeting rather than a minimum 2 hours of reporting time pay, so long as the meeting lasts at least half the scheduled length.

The Court also rejected the employees' claims for additional split shift pay. The California wage orders state that when an employee works a split shift, which is defined as any work schedule that is interrupted by a non-paid, non-working period (other than a meal or rest period), the employee is entitled to "one (1) hour's pay at the minimum wage . . . in addition to the minimum wage for the workday." The Airtouch employees contended that they were entitled to this additional pay for days on which they worked two separate shifts. However, the employees were each paid at well over the minimum wage. As a result, they were each paid more on those days during which they worked two shifts than they would have received if they had been paid the minimum wage plus a split shift premium. Accordingly, the Court found that no additional premium wages were owed. The Court explained that because the statute specifically references the minimum wage, employees who work split shifts but who make more than minimum wage "are only entitled to the difference between what they actually earned and what they would have earned had they been paid the minimum wage for their entire shift plus an extra hour." This ruling greatly limits the circumstances under which employers must pay "split shift" premiums to employees who earn more than minimum wage.

The Court upheld the dismissal of one employee's claims on the additional ground that she had signed a severance agreement containing a general release. The Court held that a general release is sufficient to release claims for reporting time pay and split shift pay, so long as there is a good faith dispute over whether or not the wages are owed.

However, the Court also held that Airtouch was not entitled to recover its attorneys' fees from the employees. Labor Code section 1194 states that in a case alleging unpaid minimum or overtime wages, only the plaintiff can recover attorneys' fees. Because California's split shift statute refers specifically to the minimum wage, claims for unpaid split shift premiums fall under this rule. The Court also found that claims for reporting time pay fall under this rule, because California's reporting time pay and split shift premium rules are similar in nature. Thus, where an employer defeats a claim for reporting time pay or split shift premiums, the employer cannot recover its attorneys' fees. However, the employer can still recover other "costs" from the employees who filed the unsuccessful claim.

This decision increases employers' flexibility in preparing employee work schedules, and allows employers to schedule employees to come into work for mandatory meetings and to work split shifts without having to pay additional premium wages. This decision also increases employers' ability to settle disputed wage claims. However, employers should bear in mind that this decision may still be appealed to the California Supreme Court, and thus may be reversed or altered in the future.