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California Supreme Court Rules On-Duty Guards Entitled to Pay for On-Call and Sleep Time

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On January 8, 2015, the California Supreme Court issued a decision holding that the on-call hours for security guards who work 24-hour shifts constituted compensable hours worked. Further, the court ruled that the guards' employer could not exclude "sleep time" from the guards' 24-hour shifts and in doing so rejected the analysis under earlier California decisions, *Monzon v. Schaefer Ambulance Service, Inc.* (1990) 224 Cal.App.3d 16 and *Seymore v. Metson Marine, Inc.* (2011) 194 Cal.App.4th 361. *Mendiola v. CPS Security Solutions, Inc.*, No. S212704, California Supreme Court (January 8, 2015).

CPS Security Solutions, Inc. provides security guards for construction sites throughout California. The company's security guards work 16-hour shifts (with 8 hours "on duty" and 8 hours "on call") on weekdays and 24-hour shifts (with 16 hours "on duty" and 8 hours "on call") on weekends. Based on an on-call agreement signed with each guard, CPS paid the guards for the time that they were on duty but did not compensate them for on-call time unless they engaged in an investigation. The guards were provided with a trailer where they could spend their time while they were on call but they were not allowed to have pets, children, or alcohol in their trailers. If a guard wanted to leave the site while on call, he or she had to wait for a reliever, stay within a 30-minute radius of the site, and carry a pager.

The guards brought a class action lawsuit claiming that CPS violated Industrial Welfare Commission (IWC) Wage Order No. 4 and other statutes and regulations, by failing to pay the guards for their on-call hours. The trial judge issued a preliminary injunction against CPS requiring the company to pay the guards for the hours that they were on call during both the 16-hour shifts and the 24-hour shifts.

The California Court of Appeal ruled that the guards are entitled to compensation for their "on-call" hours because the employer "substantially restricted" the guards' ability to engage in their personal activities. With regard to the 24-hour shifts, however, the Court of Appeal disagreed with the trial court and held that the employer may deduct 8 hours of "sleep time" from the 24-hour shifts, as long as the sleep time was uninterrupted, the guards had a comfortable place to sleep, and there was an agreement between the employer and employee that such time would be excluded.

The California Supreme Court agreed with the Court of Appeal's conclusion that the guards' on-call hours were compensable. First, the court found that the guards were subject to CPS' control:

> The guards here were required to “reside” in their trailers as a condition of employment and spend on-call hours in their trailers or elsewhere at the worksite. They were obliged to respond, immediately and in uniform, if they were contacted by a dispatcher or became aware of suspicious activity. Guards could not easily trade on-call responsibilities. They could only request relief from a dispatcher and wait to see if a reliever was available. If no relief could be secured, as happened on occasion, guards could not leave the worksite. CPS exerted control in a variety of other ways. Even if relieved, guards had to report where they were going, were subject to recall, and could be no more than 30 minutes away from the site. Restrictions were placed on nonemployee visitors, pets, and alcohol use.

The fact that the guards could engage in limited personal activities, the court found, did not make the on-call time noncompensable. Notably, the court did not weigh in on whether the existence of an agreement regarding compensation should be considered when determining hours worked. However, it did reject the application of the federal Fair Labor Standards Act regulation allowing compensation agreements with employees who reside on the employer’s premises. Second, the court agreed with the Court of Appeal that the guards’ on-call time was spent primarily for the benefit of CPS.

On the issue of sleep time, the California Supreme Court rejected the Court of Appeal’s view that, in the light of the *Monzon* and *Seymore* decisions, *all* industry-specific wage orders implicitly incorporate the federal regulation that permits the exclusion of 8 hours of sleep time from employees’ 24-hour shifts. The court disapproved of the *Seymore* decision as an improper extension of *Monzon* and noted that only Wage Order No. 5 and Wage Order No. 9 contain language providing for the exclusion of sleep time. Based on these findings, the state high court held that there is no evidence that the IWC intended to incorporate the federal sleep-time regulation into the specific wage order applicable to the security guards, Wage Order No. 4. Because Wage Order No. 4 did not expressly provide for the exclusion of sleep time, the California Supreme Court reversed the Court of Appeal’s conclusion that state and federal regulations permitted CPS to exclude sleep time from the guards’ 24-hour shifts.

According to Robert R. Roginson, a shareholder in Ogletree Deakins' Los Angeles office, “The court’s decision today is a reminder that California wage and hour laws are often more protective of employees than their federal counterparts. Employers in California cannot expect that exceptions and exemptions contained in federal regulations will automatically apply to California wage and hour laws, even where it would appear that they logically should. In California, the issue of an employer’s control over the worker’s time is paramount to determining whether such time is compensable. California employers must proceed cautiously in concluding that such time is not compensable.”

Additional Information

Should you have any questions about this decision, please contact the Ogletree Deakins attorney with whom you normally work or the Client Services Department at clientservices@ogletreedeakins.com.

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