California, State Developments, Wage and Hour

Los Angeles Wage Office Shifts Interpretation of New Fair Work Week Ordinance

March 7, 2023

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Part of a recently passed pay predictability ordinance in Los Angeles is already causing some confusion for employers over a provision requiring retail employers to pay workers a premium for working a second shift within ten hours of the first shift. Such tightly scheduled shifts often occur when a worker is needed to close and then open the next day, referred to as "clopening" shifts.

The "**Los Angeles Fair Work Week Ordinance**," which is set to go into effect on April 1, 2023, will apply to employers that are retail businesses and have at least 300 employees "globally." The ordinance, among other requirements, will require such employers to provide employees with advance notice of their work schedules and the option to work extra hours before new workers are hired.

Section 185.08 of the ordinance, entitled "Rest Between Shifts," states that employers will not be allowed to schedule an employee for a shift that starts less than ten hours from the end of the employee's previous shift without the employee's written consent. The ordinance further states that employers "shall pay an Employee a premium of time and a half for each Shift not separated by at least ten hours."

However, that language is ambiguous as to whether employers are required to pay a premium for both shifts separated by less than ten hours or for only the subsequent shift that starts less than ten hours from the end of the previous shift.

The Los Angeles Office of Wage Standards initially took the position that employers must pay employees the premium rate for both first and second shifts that are not separated by at least ten hours. On March 1, 2023, a representative for the agency confirmed to Ogletree Deakins that the initial interpretation is incorrect.

Instead, the representative said the Office of Wage Standards will interpret the ordinance to mean that covered employers "must provide premium pay for the second shift that is not separated by at least ten hours." In other words, employers will be required to pay employees 1.5 times their regular rate for the hours worked in that second shift.

Ogletree Deakins will continue to monitor and report on developments with respect to California wage and hour developments and will post updates on the firm's **California** and **Wage and Hour** blogs as additional information becomes available. Important information for employers is also available via the firm's **webinar** and **podcast** programs.