

WAGE AND HOUR LAW**Court shows employee the door: You've been paid all you're owed**

by Garrett Jensen

You schedule your employees for meetings and compensate them accordingly. Case closed, right? Now they come to you and say you should have paid them reporting time pay and/or split-shift premiums for those days. When are those payments triggered? Stay tuned to find out.

What does the law require?

The Industrial Welfare Commission wage orders regulate the wages, hours, and working conditions of California employees. Two provisions of the orders define and set the compensation required for reporting time pay and split-shift premiums to ensure employees are properly compensated as well as encourage proper notice and scheduling by employers.

Reporting time pay is defined in the following manner:

Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours and no more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

A split shift is "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods. . . . When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

But mom, I don't want to get up — it's the weekend!

A putative class action was filed against AirTouch Cellular by several of its former employees. The former employees worked mostly as "retail sales representatives" or "customer service representatives" at the company's stores and kiosks, selling cell phones, accessories, and cell phone service plans. They alleged that AirTouch didn't properly pay its nonexempt employees for attending mandatory store meetings.

One of the former employees, Daniel Krofta, worked at AirTouch stores from October 2005 to October 2006, earning \$10.58 to \$11.11 per hour plus commissions. His

store manager would post the following week's work schedule at least four days before the workweek began. Krofta, like other employees, was required to attend occasional work-related meetings, the majority of which were "store meetings" held once or twice a month on Saturday or Sunday mornings before the store opened. The meetings were scheduled in advance, were listed on his work schedules, and ran for about an hour and a half.

Both of Krofta's claims at issue in this case arose out of the scheduled meetings. Despite acknowledging that he received payment for all hours reflected on his time sheets, he argued that as a result of AirTouch scheduling him for five work-related meetings on days he otherwise wasn't scheduled to work, he was entitled to two hours of reporting time pay. Further, he contended that as a result of the company scheduling him for five work-related meetings on days when he had to come back to work later in the day, he was entitled to a split-shift premium.

How long will this meeting last?

Krofta acknowledged that he was never sent home from a scheduled period of work before he had worked at least half the scheduled period. However, in support of his claim for reporting time pay, he argued that regardless of whether meetings were scheduled or whether he worked more than half of his schedule, his employer was required to pay no less than two hours' worth of wages. The court disagreed, ruling that Krofta wasn't entitled to reporting time pay because he was furnished work for more than half the time he was scheduled on the five occasions in question.

Despite the ruling, the analysis does set up a result you should review carefully. In the example given by the court, if an employee was scheduled for an hour-and-a-half meeting and was sent home after an hour, he would be entitled to an hour of pay for the meeting but not reporting time pay. However, if the employee was scheduled for an hour-and-a-half meeting and was sent home after half an hour, he would be entitled to two hours of pay because he was furnished with less than half of his scheduled shift.

No split-shift pay for you!

Krofta, while acknowledging he was paid for all the hours he worked, still argued that he was owed additional compensation for the five instances in which he worked a split shift — likely a morning meeting followed by a shift later in the day. AirTouch responded that he wasn't entitled to additional compensation because every time he worked a split shift, he was paid a total amount greater than the minimum wage for all hours worked plus one additional hour.

AirTouch gave the example of November 26, 2005. On that day, Krofta worked a total of eight hours and

was paid \$84.64 (eight hours x \$10.58 per hour). The minimum wage at the time was \$6.75, entitling a minimum wage worker to wages of \$54 (eight hours x \$6.75 per hour) plus, in accordance with the split-shift premium, an additional hour's pay at the minimum wage, for a total of \$60.75 (\$54 + \$6.75). The court agreed with AirTouch's analysis, noting the split-shift premium provision is intended to ensure that at least the minimum wage is paid for all hours worked plus the one additional hour. Krofta, in being paid well in excess of what was required, wasn't entitled to the additional compensation.

Krofta was able to claim one victory, however. The court of appeal reversed the trial court's award of attorneys' fees to AirTouch. The court determined that claims for reporting time pay and split-shift premiums are covered by a code section that allows for attorneys' fee recovery only by a successful employee. *Aleman v. AirTouch Cellular* (California Court of Appeal, Second Appellate District, 12/21/11).

Bottom line

You need to pay special attention to situations in which split-shift premiums and reporting time pay are triggered. In reviewing schedules of workers at or near the minimum wage, you must ensure that a split shift doesn't result in the employee being paid an amount less than the minimum wage for all hours worked plus the one additional hour mandated by the wage order.

In regard to reporting time pay, this case gave the example of meetings scheduled on days an employee otherwise wouldn't be working. However, you also should be aware of other situations that would trigger reporting time pay — *e.g.*, an employee is called into work and then terminated. In that situation, the employee arguably would be entitled to at least two hours of reporting time pay.

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