



Employment Law Bulletin

June 2017

California’s “Day of Rest” Laws Have Been Clarified, But Don’t Relax Yet – Make Sure Your Policies Comply

California’s “day of rest” laws prohibit employers from “causing” employees to work more than 6 days in 7, but do not apply when the employee’s total hours worked don’t exceed 30 hours in any week or 6 hours in any one day. These seemingly simple laws were the subject of the California Supreme Court’s decision in *Mendoza v. Nordstrom, Inc.*, a class action by Nordstrom employees who were asked to fill in for other employees, resulting in their working more than 6 consecutive days.

The first issue before the court was whether the day of rest requirement applies on a fixed workweek basis, or on a rolling basis to any 7 consecutive day period. Under the fixed workweek basis, an early day of rest in any workweek, followed by a late day of rest in the next workweek, would result in an average of 1 day of rest in 7, but the employee could work more than 7 days in a row. Under the rolling workweek basis, a day of rest would be required after each 6 consecutive days worked.

In a “win” for employers, the *Mendoza* court adopted the fixed workweek basis, finding that a day of rest is guaranteed for each workweek and not for each consecutive 7 day period. As a result, rest days need not fall on every seventh day, but can be spaced out in a calendar month as long as the number of rest days amounts to the number of calendar days divided by seven. For example, the following schedule would meet the day of rest requirement for an employer with a Sunday through Saturday workweek because the employee receives 1 day of rest in each workweek, even though the employee works 12 consecutive days.

	Su	M	Tu	W	Th	F	Sa
Workweek 1	Rest	X	X	X	X	X	X
Workweek 2	X	X	X	X	X	X	Rest

The *Mendoza* decision illustrates the need for employers to specify and announce their workweek and to schedule employees with the workweek and day of rest rules in mind. In designating the workweek, the employer can pick the fixed and regularly recurring

consecutive 7 day period that works best for the business, starting with the same calendar day each week (Sunday-Saturday, Tuesday-Monday, etc.). If the employer does not designate the workweek, the workweek will start Sunday at 12:00 a.m. and end Saturday at 11:59 p.m.

The second issue before the *Mendoza* court was whether the day of rest exemption for workers employed 6 hours or less per day applies when the employee works 6 hours or less on at least 1 day of the week, or only when an employee works no more than 6 hours on each and every day of the week. On this issue, the court ruled in favor of the employees, finding that the day of rest exemption only applies if the employee never exceeded 6 hours of work on any day of the workweek. Based on this ruling, the day of rest exemption applies as follows:

	Su	M	Tu	W	Th	F	Sa	
Workweek 1	6	6	5.5	5.5	6	6	6	No violation
Workweek 2	6	6	5.5	5.5	6	6.5	6	Violation

Finally, the *Mendoza* court was asked to determine what it means “for an employer to ‘cause’ an employee to go without a day of rest: force, coerce, pressure, schedule, encourage, reward, permit, or something else?” On this issue, the Court held that an employer must notify its employees of their entitlement to a day of rest and may not encourage them to forego rest or conceal the entitlement to rest, but is not liable simply because the employee chooses to work on a 7th consecutive day in the workweek.

With the Court’s clarification of the day of rest requirements, we recommend the following steps to ensure your company is in compliance:

- specify your company’s 7 day workweek in your employee handbook;
- notify employees of their right to one day of rest in each workweek (and when the 6 hour/day exemption applies) in your employee handbook;
- train supervisors about the day of rest rules so they schedule work to avoid violations and don’t pressure employees to work in lieu of a required day of rest;
- train payroll personnel to spot day of rest violations so issues can be identified and resolved; and
- contact one of SMT’s employment attorneys if you have questions or need assistance with drafting policies or training personnel.

A Summer Refresher On Deductions For Exempt Employees Vacations

As we head into the summer, keep the following rules in mind when exempt (non-overtime eligible) employees take time off without enough accrued vacation/PTO to cover their absence:

- Time off for vacation may be deducted from the employee’s accrued vacation/PTO in partial day increments as defined in your written vacation/PTO policy, but salary cannot be deducted unless the employee did not perform any work in the workday.
- If the employer shuts down operations making work unavailable, the employer can only require an exempt employee to use accrued vacation/PTO (or deduct from salary if the vacation/PTO balance is zero) if the closure is for the entire workweek and the employee doesn’t perform any work in the workweek. Exempt employees must be paid the full week’s salary for partial workweek closures, and cannot be required to use vacation/PTO.

Exempt employee salary deductions can be risky and if not done correctly, put the employee’s exempt status at risk, so don’t hesitate to contact one of SMT’s employment attorneys if you have questions.

No Se Habla Español?

SMT's employment attorneys can provide your company with employment policies, forms and employee disciplinary documentation in Spanish. Providing such important information to employees in the language they understand is critical to employee performance, providing a welcoming diverse work environment, and protecting your company against employment claims. Contact an SMT attorney today to get started.

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