



Sleeping on the Job in California: Supreme Court Issues Wake-Up Call to Employers with 24-Hour On-Call Employees

The issue of compensation for employees whose position includes being on call and living onsite was the subject of the California Supreme Court's decision in *Mendiola v. CPS Security Solutions, Inc.* decided Jan. 9, 2015. The Court held that on these facts, the employees were entitled to pay not only for on-call time but also for time spent sleeping. The Court acknowledged a different rule under federal law but noted once again that California is free to grant greater protections. As we can expect, increased class action activity will follow. The court noted that the facts mattered, and are summarized here as reported by the Court in some detail.

CPS employed on-call guards to provide security at construction worksites. Part of each guard's day was spent on active patrol. Guards were required to be on call at the worksite and to respond to disturbances should the need arise. On weekdays, each guard was on patrol for eight hours, on call for eight hours and off duty for eight hours. On weekends, each guard was on patrol for 16 hours and on call for eight hours.

Per written agreement, on-call guards were required to reside in a trailer provided by CPS. The trailers had residential amenities, including a bed, bathroom, kitchen, heating and air conditioning. Guards could keep personal items in the trailers and generally use on-call time as they chose. However, children, pets and alcohol were not allowed and adult visitors were permitted only with the approval of the CPS client. An on-call guard wanting to leave the worksite had to notify a dispatcher and indicate where he or she would be and for how long. If another employee was available for relief, the guard had to wait onsite until the relief guard arrived. If no relief guard was available, the guard had to remain onsite, even in the case of a personal emergency. If relieved, a guard had to be accessible by pager or radio phone and had to stay close enough to the site to return within 30 minutes.

Guards were paid hourly for time spent patrolling the worksite. They received no compensation for on-call time unless (1) an alarm or other circumstances required that they conduct an investigation or (2)

they waited for, or had been denied, a reliever. Guards were paid for the actual time spent investigating disturbances. If three or more hours of investigation were required during on-call time, the guard was paid for the full eight hours.

After reciting these facts, the court ruled: "We conclude that plaintiffs' on-call hours constituted compensable hours worked and, further, that CPS could not exclude 'sleep time' from plaintiffs' 24-hour shifts under *Monzon v. Schaefer Ambulance Service, Inc.* (1990) 224 Cal.App.3d 16 and *Seymore v. Metson Marine, Inc.* (2011) 194 Cal.App.4th 361." In doing so, the Court again acknowledged the role that employer control played in determining whether on-call time is working time. It discounted the fact that "on-call guards engaged in personal activities, including sleeping, showering, eating, reading, watching television and browsing the Internet." It also expressly rejected the invitation to adopt 29 C.F.R. §785.23's more limited interpretation of when employees living onsite were engaged in compensable activities. In doing so, it distinguished *Monzon* and disapproved of *Seymore* stating: "Accordingly, we conclude that the wage order does not permit the exclusion of sleep time from compensable hours worked in 24-hour shifts covered by Wage Order 4."

The Court in *Mendiola* was focused on one very specific issue. Thus, unaddressed were issues like the impact of the ruling on rest and meal period requirements and daily overtime. We can expect to see these and other issues begin to flower in the new year.

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