

CALIFORNIA

California Supreme Court Rules Noncompliant Rest Periods Must Be Paid at Regular Rate of Pay

On July 15, 2021, the California Supreme Court ruled in *Ferra v. Loews Hollywood Hotel, LLC* that employers must use the regular rate of pay rather than the hourly wage rate when paying employees for noncompliant meal and rest periods.

Noncompliant Meal and Rest Breaks

Under California's Labor Code, employers must provide employees with specific meal, rest or recovery periods when mandated by a particular Industrial Welfare Commission (IWC) order. Employers that fail to provide these break periods must compensate their employees for one additional hour of work at the employee's "regular rate of compensation." The court's decision clarifies that "regular rate of compensation" means the regular rate of pay and not the employee's contractual rate of pay.

The Regular Rate of Pay

An employee's regular rate of pay is equal to their entire compensation for a workweek divided by the number of hours the employee works during that workweek. It includes hourly earnings, salary, piecework, bonuses, shift premiums or differentials, and commissions. As a result, an employee's regular rate of pay may be higher than the employee's contractual hourly wage rate.

Impact on Employers

Employers subject to IWC orders should adjust their timekeeping and payroll policies and practices to ensure noncompliant breaks are paid at the employee's regular rate of pay. In addition, given the retroactive nature of this decision, employers may wish to consult with a knowledgeable legal professional to assess whether payroll adjustments are necessary.

Key Information

Supreme Court Holding

The "regular rate of compensation" under section 226.7(c) encompasses all nondiscretionary payments, not just hourly wages.

Labor Code section 226.7(c)

If an employer fails to provide an employee a meal or rest or recovery period [...] the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The court clarified that "regular rate of compensation" means the regular rate of pay and not the employee's contractual rate of pay.