

California Case Expands Reporting Time Pay Requirements

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Key Points

- The California Court of Appeal recently expanded the application of reporting time pay to certain types of “on-call” shifts.
- If an employer requires an employee to call in or otherwise contact the employer to find out if he or she needs to report for a given shift, reporting time pay may be owed when the employee is not needed, even though the employee does not have to come in to work.
- Employers using any sort of “call-in” system for shifts should review their policies and practices.

On February 4, 2019, in *Ward v. Tilly's, Inc.*, the California Court of Appeal found that reporting time pay is owed for certain “on-call” shifts, where the employee must call in to find out if he or she is needed, but is told not to report to work. The act of calling in triggers the reporting time pay requirements in these circumstances, even though the employee is not actually required to come in to work.

Generally, California employers must pay “reporting time” pay when “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.” See, e.g., Wage Order 7-2001 (Cal. Code Regs. Tit. 8, § 11070). The amount of pay owed is half the usual or scheduled day’s work, but in no event for less than two hours or more than four hours. If an employee must report for work a second time in a workday and works for less than two hours on the second reporting, then the employee must be paid for two hours.

In *Ward*, retail employees were required to call in two hours before their scheduled “on-call” shift began to find out if they needed to work that day. The “on-call” shift was sometimes followed immediately by a regular shift, and the employee would call in to find out if they needed to work the on-call portion. In other circumstances, they were scheduled for an “on-call” shift immediately after a regular shift (e.g., regularly scheduled from 10:00 a.m. to 2:00 p.m.; on-call from 2:00 p.m. to 4:00 p.m.), and would find out during their shift if they had to remain for the on-call portion. In each of

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these scenarios, employees were paid only for their actual time worked, with no compensation for “on-call” shifts (or “on-call” portions of shifts) they were told they did not need to work. *Ward*, 2019 WL 421743, Cal. Ct. App. at *1. The plaintiff sought reporting time pay for those “on-call” shifts that they called in for, but did not work.

The defendant contended that “reporting to work” required the employee’s “physical presence at the workplace at the start of a scheduled shift,” as opposed to simply verifying the work schedule in advance. The plaintiff argued that in the modern work environment, where employees often work remotely and use their phones for timekeeping purposes, “reporting to work” should be read more broadly. After determining that the phrase was ambiguous, the Court turned to the purpose of the reporting time pay requirement, which it found was twofold: (1) to compensate employees, and (2) to encourage proper notice and scheduling. *Ward*, 2019 WL 421743, at *9.

The Court found the defendant’s system to be extremely burdensome on employees, because it required them to be available, prevented them from working other jobs or scheduling other activities, and made child-care arrangements onerous and potentially costly. Employees, likewise, had to be available two hours before the shift start time in order to call in. Based on these findings, the Court sided with the plaintiff, deciding that requiring reporting time pay in these circumstances comported with the goals of compensating employees and encouraging employers to properly notify and schedule employee work in advance.

In light of this decision, California employers who use a “call-in” or similar scheduling system should review their policies and practices. Reporting time pay may now be required.