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California Supreme Court Rules Meal and Rest Period Premium Pay Is Calculated in the Same Manner as Calculations for Overtime Regular Rate of Pay

On July 15, 2021, the California Supreme Court decided *Jessica Ferra v. Loews Hollywood Hotel, LLC*, S259172 (Cal. S.Ct. July 15, 2021). The question before the Court was "whether the Legislature intended 'regular rate of compensation' under section 226.7(c) to have the same meaning as 'regular rate of pay' under section 510(a), such that the calculation of premium pay for a noncompliant meal, rest, or recovery period, like the calculation of overtime pay, must account for not only hourly wages but also other nondiscretionary payments for work performed by the employee." *Id.* at 1. The Court ruled explicitly that the terms "are synonymous and encompass[] all nondiscretionary payments, not just hourly wages". *Id.* The Court's holding means employers who are paying meal and rest period premiums must pay the premium with the same methodology as the calculation of the "regular rate of pay" for overtime by factoring in all nondiscretionary payments (e.g., bonuses, etc.). Importantly, the Court also ruled this decision will apply retroactively.

The *Ferra* decision is another item to review in California employers' wage and hour practices. Companies with questions about the *Ferra* decision and the calculation of meal and rest period premium pay should contact experienced counsel to make sure that their company is current on all of the latest developments in this area of the law.

Authors

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