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California Supreme Court Holds that “Regular Rate of Compensation” Is Synonymous with “Regular Rate of Pay” for Purposes of Calculating Meal and Rest Break Premiums

On July 15, 2021, The Supreme Court of California published its opinion on *Ferra v. Loews Hollywood Hotel, LLC* and reversed the appellate court’s decision.

Under California law, employers must provide employees with overtime pay when employees work more than a certain amount of time. Overtime is paid at the employee’s “regular rate of pay,” which includes hourly wages and nondiscretionary payments for work performed by employees. California law also provides for meal, rest, and recovery periods. Employers who fail to provide employees with compliant meal, rest, or recovery periods are required to “pay the employee one additional hour of pay at the employee’s regular rate of compensation.” The question in *Ferra* is whether the “regular rate of compensation” includes both hourly wages and nondiscretionary payments, like the employee’s “regular rate of pay” used in overtime calculations.

The Court of Appeal held that “regular rate of compensation” and “regular rate of pay” are not synonymous, and the premium for missed meal and rest periods is the employee’s base hourly wage. The Supreme Court reversed this decision, holding that the terms have the same meaning and encompass not only hourly wages but also nondiscretionary payments. Importantly, the Supreme Court refused to hold that their decision only applies prospectively and held that the decision applies retroactively.

California employers who are not already including nondiscretionary payments in the meal and rest period premiums should start doing so. Furthermore, with the Supreme Court’s decision applying retroactively, California employers may see a rise in litigation challenging meal and rest break practices prior to the date of this decision.

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