

Employment Law Newsletter

Legal news promoting employee rights

COMPENSATION FOR “ON-CALL” WORK.

By Morris Nazarian

Many employers require their employees to perform standby or on call work, by requiring them to carry a cell phone, to wait around a specific location or to regularly check their email after they have left the office. This issue focuses on whether the employee must be paid for those “on-call” hours.

On the work Site

Under California law, most employees must be paid at least the minimum wage (The minimum wage in California as of January 1, 2007 was \$7.50 an hour and on January 1, 2008 is \$8.00 an hour) for all "hours worked"¹ and ². Thus, an employee who is required to remain at the place of business, after normal hours, must be paid for those hours even if the employee does not do anything but wait around.

Off the work Site

The problem arises when the employee is not required to remain on the employer's premises. In order to determine whether the employee should be paid for the “on-call” Whether on-call or standby time is based on the degree of control the employer has over the employee. If the employee is not free to do whatever they want after hours or if the employee is required to remain in a specific area, the employer is controlling the employee’s hours and the employee must be paid for that "controlled" time. Controlled standby time may be compensated at a

¹ “Hours worked means the time during which an employee is subject to the control of an employer, and includes all time the employee is suffered or permitted to work, whether or not required to do so,”

² In Section 2 of Industrial Welfare Commission Orders 4 and 5, there is a modified definition of hours worked for employees in the health care industry.

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different rate than is paid for regular work by the employee, so long as the employee is paid at least minimum wage.

On the other hand, if the employee is allowed to pursue his or her own pursuits, then such on-call or standby time is not compensable.

In Isner v. Falkenberg /Gilliam & Associates, Inc. (2008), 160 Cal.App.4th 1393 a California Court of Appeal issued its decision in a case addressing whether and to what extent time spent by employees living on the employer's property was considered hours worked. The *Isner* court held that the employees were entitled to compensation only “for the time they spent carrying out assigned duties, i.e., responding to emergency calls,” but not “for the time they were able to attend to personal matters while remaining available to respond to emergency calls.”

Depending on how free the employee is to attend to his or her private matters without substantial limitations, the employee might have pay the employee for those hours that the employee is not free to attend to private pursuits.

What you should know?

- If you are an exempt employee (i.e. administrative, executive, professional or outside sales position), you are not entitled to extra pay for on-call time.

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