REPORTING TIME PAY REVEALED

06.10.2014
Employment Law Reporter, Ervin Cohen & Jessup LLP

(Please download PDF for full issue.)

PROFESSIONALS

Kelly O. Scott

PRACTICE AREAS

Employment

An employer realizes that too many employees have reported for work on what is obviously going to be a slow day for business. Just send home the extra employees, right? Yes, but not without considering the consequences.

In California, the Industrial Welfare Commission (IWC) determined that non-exempt employees who report to the workplace expecting to work a certain number of hours but who are deprived of that amount of work by the employer should be guaranteed at least some compensation for their efforts. The IWC Wage Orders require that employers must pay such employees for both the hours the employee actually works and for certain unworked but regularly scheduled time known as "reporting time pay." The basic requirements for reporting time pay are that for each workday that an employee is required to report to work, but is not put to work or is sent home after performing less than half of his or her scheduled day's work, the employee must be paid for half the scheduled day's work in an amount of not less than two, nor more than four hours, at his or her regular rate of pay. Thus, if an employee scheduled for an eight-hour shift only works for two hours, the employer must pay the employee four hours of pay at his or her regular rate of pay (in this case, for the two hours worked, and two more as reporting time pay). However, since reporting time pay is not counted as hours worked for purposes of determining overtime, only the two hours worked will count as actual hours worked.

The IWC also established a rule for employees who are required to work more than one shift in a day. Specifically, if an employee is required to report to work a second time in a single workday and is provided less than two hours of work, he or she must be paid for two hours at his or her regular rate of pay for the second shift or reporting. An exception to this rule is a regularly scheduled shift of less than two hours, such as a monthly meeting.

Reporting time pay does not apply in situations where the employee is intoxicated or is otherwise not fit to work, nor does it apply when the employee is sent home or terminated as a disciplinary action. Further, the IWC has stated that no reporting time pay is due when: the employer's operations

cannot begin or continue due to threats to employees or property, or when civil authorities recommend that work not begin or continue; when public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; when the interruption of work is caused by an Act of God or other cause not within the employer's control, such as in the event of an earthquake; and if an unexpected or unusual occurrence during off hours makes it impossible for the employer to open for business and the employer has made every reasonable effort to notify employees not to report for work.

What of the situation where the employer realizes that too many workers have been scheduled before the shift begins and seeks to make a change? Unfortunately, what is reasonable or proper notice of a change or cancellation of the shift is not defined by law and will depend on the circumstances. Indeed, there is a wide range of opinions on what might be reasonable, from one day or 12 hours before the start of the shift to a minimum of at least prior to the regular commute time of the individual employee. Similarly, the manner in which the notice must be delivered to the employee is not specified. Again, it is what is reasonable under the circumstances.

Accordingly, employers who are frequently confronted with the need to change or cancel shifts should consider an agreement between the employee and employer defining the manner in which notice will be delivered and the reasonable timing for any such notice. Such an agreement should be sufficient to avoid any misunderstandings, provided it is entered into in good faith and is not unconscionable.

Employers with alternative workweek schedules should keep in mind that the Division of Labor Standards Enforcement (DLSE) takes the position that frequent changes to a bona-fide alternative workweek schedule can result in a loss of the eight-hour overtime exemption that otherwise applies. In addition, a regular change to the alternative workweek requires one week notice to be reasonable.