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CALIFORNIA SUPREME COURT RULING
MEAL AND REST BREAK PREMIUMS MUST BE PAID AT EMPLOYEE'S REGULAR RATE OF PAY

California Supreme Court's Decision

On July 15, 2021, the California Supreme Court (in in the case of Ferra v. Loews Hollywood Hotel, LLC) decided that the calculation for **non-exempt employees** of the required one hour premium payment for missed, late or short meal and rest breaks must take into account all nondiscretionary payments, such as certain types of bonuses, commissions and shift differentials (which are common for evening and night shifts, and sometimes paid for weekend shifts).

⇒ This requirement adds to the existing complexities imposed by California wage and hour laws for paying **non-exempt employees**.

These California wage and hour regulatory complexities include:

1) overtime at time and a half for time worked over 8 hours in a day (regardless of the total number of hours worked in a work week)
2) the precise recording of all daily hours worked, including the beginning and ending of meal periods;

and

3) providing required meal and rest periods at specified times. Below we outline the ruling and offer five key takeaways.

This ruling represents a departure departed from the longstanding view that non-exempt employees' meal and rest break premiums are paid at the employee's **base hourly rate**, rather than the employee's **regular rate of pay** that is used to calculate an employee's overtime pay rate.

⇒ Unfortunately, many employers typically do not fully understand the difference between these two types of pay rates. This is sometimes true even when employers use an external payroll provider.

⇒ The **regular rate of pay** is calculated by dividing an employee's total earnings for the workweek (including, but not limited to, any commissions, nondiscretionary bonuses, and piece rate hours) by the total hours worked during the workweek, including the overtime hours, to come up with the regular rate.

Key Takeaways for Employers

As an overall action, employers would be wise to consult with their employment attorney and with their external payroll services provider.

#1 – Growth of Regulatory Requirements: This case is another striking example of employers need to fully understand and to comply with various aspects of the different laws of the states in which they operate, and not just with federal regulations

⇒ Additionally, there are a growing number of cities and municipalities that have enacted and are enacting local regulations with which employers need to understand and comply.

#2 - Ferra v Loews Applies Retroactively: The court held that the decision applies retroactively, which means employers will be held responsible if they calculated premiums incorrectly prior to this decision.

⇒ This exposes employers to liability, and California employers can expect that new wage and hour class actions will seek civil penalties for failing to include nondiscretionary payments in their premium pay calculations.

⇒ The statutes of limitations for California wage and hour claims can go back as far as three or four years, depending upon the specific claims.

#3 - Review of Application of Related Policies and Procedures: The impact of treatment of premium penalties for meal and rest periods in the past should be assessed in the context of this new ruling, including a determination of whether to re-calculate past premium payments.

#4 - Updating Payroll Policies and Practices: Employers will need to update payroll policies to ensure compliance with the calculation of the meal and rest period premiums as now enunciated by the California Supreme Court.

#5 - Nondiscretionary Incentives: Employers should be aware that nondiscretionary payments are included in the calculation of the regular rate for both overtime and meal and rest premium pay purposes.

⇒ With this in mind, employers may be reluctant to create new incentive programs so as to avoid raising the regular rate of The "regular rate of pay" encompasses not only an employee's base hourly rate, but also any non-discretionary bonuses, commissions, and certain other amounts that an employee earned in a given work week.

⇒ An example is a pay differential based on the shift work, which is commonly the case for evening and night shifts, and sometimes for weekend work shifts.

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The HR Godfather™

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