

e-Alert

08.23.21

California Supreme Court Rules “Unclaimed” Rest Periods Must Be Paid at “Regular Rate of Pay”

Background

On July 15, 2021, a California Supreme Court ruling provided clarity on which rate of pay to use when compensating unclaimed rest periods to employees based on its ruling in [Ferra vs. Lowes Hollywood Hotel, LLC](#). The recent ruling stated that the extra pay must be calculated at the employee's "regular rate of pay," which is the formula used to determine overtime premiums under the state labor code and must take into account all nondiscretionary payments.

Summary

California's [Labor Code Section 226.7](#) states that nonexempt employees should be compensated for one additional hour in lieu of their unclaimed rest periods. Employers failing to compensate their employees for these break periods must then compensate them for one additional hour of work at the employee's "regular rate of compensation."

This content is provided with the understanding that HR Knowledge is not rendering legal advice. While every effort is made to provide current information, the law changes regularly and laws may vary depending on the state or municipality. The material is made available for informational purposes only and is not a substitute for legal advice or your professional judgment. You should review applicable laws in your jurisdiction and consult experienced counsel for legal advice. If you have any questions regarding this content, please contact [HR Knowledge](#).

An employee's "[regular rate of pay](#)" is not the same as an employee's traditional hourly rate. The "regular rate of pay" is calculated by including all compensation received during the workweek. Total compensation should include hourly earnings, salary, piecework, bonuses, shift premiums, shift differentials, and/or commissions. Once the total weekly earnings are calculated, this amount should be divided by the number of hours the employee worked that week. We have broken this down into an easy formula to use when calculating pay for your affected employees:

Hourly Earnings + Salary + Piecework + Bonuses + Shift Differentials + Shift Premiums +
Commissions = [Total Weekly Earnings](#)

[Total Weekly Earnings](#) / Total Hours Worked = [Regular Rate of Pay](#)

([Regular Rate of Pay](#) x 1 hour) x each day the employee had unclaimed rest periods =
[Total Amount to be Paid to Employee](#)

The Supreme Court made this ruling **retroactively**. Therefore, California employers may expect a new wave of class action and Private Attorney General lawsuits following the *Ferra* decision.

Employer Next Steps

- This case makes it all the clearer that multi-state employers need to fully understand and to comply with various aspects of the different laws of the US states in which they operate.
- The court held that the decision applies retroactively, California employers should review their current pay practices to ensure they include nondiscretionary payments in their premium pay calculations.
- Employers should review and update payroll policies to ensure compliance with the calculation of the meal and rest period premiums.
- Employers should review all of their incentive programs that may raise the regular rate of wage payments to non-exempt employees, to understand how they impact this new ruling.
- If you are a Full-Service or Managed Payroll Client and would like our assistance in ensuring your current pay practices are in compliance, please [email us](#).

This content is provided with the understanding that HR Knowledge is not rendering legal advice. While every effort is made to provide current information, the law changes regularly and laws may vary depending on the state or municipality. The material is made available for informational purposes only and is not a substitute for legal advice or your professional judgment. You should review applicable laws in your jurisdiction and consult experienced counsel for legal advice. If you have any questions regarding this content, please contact [HR Knowledge](#).

The People Simplifying HR

For almost twenty years, HR Knowledge has made it our mission to demystify the complex and daunting process of HR management. We do more than just provide the level of service and technology you'd expect from an industry leader. We combine unparalleled passion for service with our decades of HR, payroll, and benefits experience to provide our clients with personalized and actionable advice that is second—to—none. From managed payroll to employee benefits to HR support, we can help your organization thrive, grow, and reduce operating costs—no matter what industry you serve. Whether you're interested in our Full-Service solution or just need your employee handbook written, HR Knowledge can help you minimize risk while staying on top of compliance regulations. The bottom line? We're not just another cloud-based technology company that also does HR, #WeAreHR. [Get the scoop](#) on how we can help you simplify HR.



@WEAREHRK