# Expansion of the Reporting Time Obligation and the Impact For On-Call Shifts

by Randy A. Lopez

The new decision from the California Court of Appeals in *Ward v. Tilly's, Inc.,* 2019 Cal. App. LEXIS 95 (Cal. Ct. App. Feb. 4, 2019), adopts a new standard for reporting time pay, applicable to non-exempt employees.

California provides "reporting time" pay (also known as "show-up pay") for any employee who reports to work but does not work the expected number of hours, including being told that an employee's services are not needed for the day. The Wage Orders issued by the California Industrial Wage Commission ("**IWC**") require employers to pay employees for each workday that "an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work." In part, the Wage Orders provide that when "reporting time" applies, the employee will be paid for half of the usual or scheduled day's work (for no less than two (2) hours or more than four (4) hours) at the employee's regular rate of pay.

**Ward v. Tilly's**

*Ward v. Tilly's* has now expanded "reporting time" to include situations where employees are required to contact their employer (either by phone, email, logging on to work system, etc.) before their "on-call" shifts. In *Tilly's*, the plaintiff and other store employees were scheduled for a combination of regular and "on call" (or "call-in") shifts. The employee was required to contact the store to find out if her services were needed for the on-call shift.

**Court's Analysis**

The Court acknowledged that the IWC Wage Orders reflect a requirement that the employee had to physically "report to work" in order for the "reporting time pay" to kick in. However, it looked at the history of the IWC's reporting time pay requirements, expressed by the California Supreme Court, to compensate employees, and encourage proper notice and scheduling. The Court of Appeals stated in its decision that "unpaid on-call shifts are enormously beneficial to employers" while imposing "tremendous costs on employees".

The Court of Appeal also analyzed the plain language of the Wage Order as well as its history, and concluded that the phrase "reporting for work" did not necessarily equate to physical appearance at the workplace. The Court explained that "'reporting for work' within the meaning of the Wage Order is best understood as presenting oneself *as ordered.* 'Reporting for work,' in other words, does not have a single meaning". Reporting for work is instead defined by the employer – the one who directs the manner in which the employee is to present himself for work.

The Court focused on the consequences to an employee of being scheduled for an "on-call shift", which include:

(a) the inability to commit to other jobs;

(b) the inability to schedule classes for those that work and attend school;

(c) if the employee has children or cares for elders, the employee must make contingent arrangements, which they may have to pay for even if they do not go to work; and

(d) cannot commit to social plans or know if they can maintain social plans.

The Court also acknowledged that the employee's activities were constrained for the two-hours before the on-call "shift" because employees could not engage in activities incompatible with making a phone call, like taking a nap, watching a movie, or being without cell service.

**Court's Ruling**

The Court said, "[i]n short, on-call shifts significantly limit employees' ability to earn income, pursue an education, care for dependent family members, and enjoy recreation time." The Court of Appeals ruled the employer's requirement that plaintiff contact the store triggered the "reporting time" pay obligation at the moment the contact occurred, regardless of whether the employee had to actually physically report to work.

Tilly's is a retail store where "on-call" shifts or contingency shifts are more likely to occur. However, this issue will impact many other industries where an employer regularly and/or occasionally uses "on-call" shifts or something of a similar nature. Further, for larger companies, the Court's ruling is especially problematic because it could lead to putative class action claims.

It is important to note that the Court did not state whether this change in standard should be applied solely prospectively, or whether it should also apply retroactively. Recently, the Ninth Circuit Court of Appeals heard oral arguments in a case that deals with the same issue which could certify the decision or reach a different result.

Due to this significant change in reporting time obligations, employers should review their call-in and on-call policies to ensure that they are complying with California law and are properly compensating employees. If your company has any questions or needs assistance in navigating this new requirement, or any other employment-related issues, please feel free to contact us.

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