

***Mendoza v. Nordstrom* (2017) S224611**

Day of Rest Required by Labor Code Sections 551 is calculated by workweek rather than by any 7 consecutive days

FACTS

Plaintiffs were a barista and sales associate at Nordstrom. Plaintiffs were frequently asked to fill in for other employees, resulting in them working more than six consecutive days, with some shifts being less than six hours.

PROCEDURAL HISTORY

Federal District court granted summary judgment on claims other than the day of rest claims. It proceeded with a bench trial. The district court concluded that: 1) section 551 applied on a rolling basis for any 7 consecutive days; 2) but, under section 556, the day of rest did not apply so long as the employee had at least one shift of six hours or less during the period; and 3) Nordstrom did not “cause Plaintiffs to work more than six consecutive days since it did not force or coerce them to do so. Thus the action was dismissed.

Plaintiffs appealed to the Ninth Circuit, which filed an order requesting that the CA supreme Court solve these unsettled questions of California law.

ISSUES

- 1) Is the day of rest required by Labor Code sections 551, 552 calculated by the workweek, or does it apply on a rolling basis to any seven-consecutive day period?
- 2) Does the section 556 exemption for workers employed six hours or less per day apply so long as an employee works six hours on at least one day, or must the employee work less than six hours on all days?
- 3) What does it mean for an employer to “cause” an employee to go without a day of rest (§552): force, coerce, pressure, schedule, encourage, reward, permit, or something else?

HOLDINGS

- 1) The day of rest requirement only applies to a workweek. Periods of more than six consecutive days of work across more than one workweek are not prohibited.
- 2) The exemption for employees working shifts of six hours or less only applies to workers who never exceed six hours of work on any day of the workweek. If on any day an employee works more than six hours, he must be given a day of rest.
- 3) An employer causes its employee to go without a day of rest when it induces the employee to forgo rest to which he or she is entitled. An employer is not, however, forbidden from permitting or allowing an employee who is aware of the right to independently choose not to take it.

REASONING

- 1) The text of sections 551 and 552 is ambiguous. The legislative history of these statutes was not helpful either. Thus the Court relied on the history of Industrial Welfare Commission Wage Orders, due to authority holding that “wage and hour claims are today governed by two complementary and occasionally overlapping sources of authority: the provisions of the Labor Code, enacted by the Legislature, and a series of 18 wage orders, adopted by the IWC.” (*Brinker Restaurant Corp. v. Superior Court* 2012) 53 Cal.4th 1004.) The earliest one only applied to women, and specifically limited work to “six days in any one week” rather than on a rolling basis, and maintained this

language throughout subsequent revisions extending the limitation to other groups. Specifically, the 1976 IWC Wage order issued after the Legislature expanded the IWC's jurisdiction to include adult men defined the day of rest as applying only to a "workweek" which was defined as "any seven consecutive days, starting with the same calendar day each week." The court also relied on the overall statutory scheme, as Labor Code section 500(b) also defined a Week" and "workweek" as "any seven consecutive days, starting with the same calendar day each week."

- 2) Under Nordstrom's interpretation, employees who work 30 hours or less weekly or six hours or less on at least one day are exempted. Under this reading, the daily limit serves no function, as any employee who works no more than 30 hours in a seven day period average less than 4.3 hours per day an necessarily will have had at least one day of six hours or less. Thus having a separate daily limit would be wasted text. The Plaintiff's interpretation avoided the absurd result of having an employee work full shifts for six days followed by a single six hour day. The exception would swallow the rule.
- 3) The court relied on the plain meaning of the word "cause in the statute", which is defined in Black's to mean: "to lead, induce, make, or compel." The court also relied on authority that said that worker protection statutes were to be liberally interpreted. (*Brinker, supra.*)