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Mendiola v. CPS Security Solutions, Inc.; 340 P.3d 355 (C al. 2015)

Mendiola v. CPS Security Solutions, Inc. 340 P.3d 355 (Cal. 2015)

Opinion by Corrigan, J.

Issues

Under California Wage Order 4, are security guards entitled to compensation for all on-call hours spent at their assigned worksites under their employer's control, and may sleep be excluded from twenty-four hour shifts?

Statement of Facts

CPS Security Solutions, Inc. ("Defendant") employed on-call security guards to provide security at construction worksites.[1] Each guard spent the day on active patrol and the evening on call at the worksite to respond to any disturbances that may arise.[2] The weekday shift called for eight hours of patrol duty, eight hours on call, and eight hours off duty.[3] Weekends called for sixteen hours of patrol duty and eight hours on call.[4] By written agreement, an on-call guard was required to reside in a trailer equipped with residential amenities and provided by Defendant.[5]

The on-call guard was generally permitted to use on-call time as he or she chose within some restrictions.[6] Moreover, an on-call guard wanting to leave the worksite was required to notify a dispatcher and wait until a reliever arrived.[7] Guards were paid hourly for time spent patrolling the worksite; however, they received no compensation for on-call time unless circumstances required they conduct an investigation or they have been denied a reliever upon request.[8]

Under the theory that Defendant's on-call compensation policy violated minimum wage and overtime obligations imposed by the applicable wage order and Labor Code statutes, CPS guards ("Plaintiffs") filed two class action lawsuits, which were then consolidated by the trial court.[9] The trial court granted summary adjudication for Plaintiffs and concluded that Defendant's compensation policy violated Wage Order 4.[10]

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1. c., 340 P.3d 355, 357 (Cal. 2015).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.* (reporting that children, pets, and alcohol were not allowed, and only approved adult visitors were permitted).
7. *Mendiola*, 340 P.3d at 357 (stating that on-call guards were required to notify a dispatcher and indicate where he or she would be and for how long).
8. *Id.* at 358 (indicating that on-call guards were only paid for actual time spent investigating disturbances).
9. *Id.*
10. *Id.*

The court of appeal concluded that Plaintiffs' on-call time constituted compensable hours but that state and federal regulations permitted Defendant to exclude sleep time from Plaintiffs' twenty-four hour shifts.[11] Subsequently, both parties petitioned for review.[12]

ANALYSIS

The Supreme Court of California prefaced its discussion by outlining the two sources of authority governing wage and hour claims: the Labor Code and a series of eighteen wage orders.[13] Focusing specifically on Wage Order 4, the court quoted that employers are required to "pay to each employee . . . not less than the applicable minimum wage for all hours worked in the payroll period."[14]

Wage Order 4 defines 'hours worked' as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."[15] The court noted that in determining whether on-call time constitutes hours worked, California courts have focused on the extent of the employer's control.[16] After laying out eight factors used by California courts in determining the extent of an employer's control,[17] the court concluded that Plaintiffs' on-call hours did represent hours worked.[18]

Addressing Defendant's arguments in its own section, the court rejected the notion that Plaintiffs were not under its control because they were permitted to engage in limited personal activities.[19] Furthermore, the court also rejected Defendant's argument that 29 Code of Federal Regulations part 785.23[20] should be incorporated into Wage Order 4 because federal regulations provide a floor on which states may offer greater protection.[21] The court also distinguished the fact that California Wage Order 5 mirrors language from federal regulations, thereby providing "convincing evidence" of intent to adopt federal standards.[22]

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11. *Id.*
12. *Id.*
13. *Mendiola*, 340 P.3d at 358.
14. *Id.*
15. *Id.* at 359.
16. *Id.* at 359-360.
17. *Id.* at 360 (listing the following factors to determine the extent of an employer's control: (1) whether there was an on-premises living requirement; (2) whether there were excessive geographical restrictions on employee's movements; (3) whether the frequency of calls was unduly restrictive; (4) whether a fixed time limit for response was unduly restrictive; (5) whether the on-call employee could easily trade on-call responsibilities; (6) whether use of a pager could ease restrictions; (7) whether the employee had actually engaged in personal activities during call-in time; and (8) whether on-call waiting time was spent primarily for the benefit of the employer and its business).
18. *Id.* at 360-361.
19. *Mendiola*, 340 P.3d at 361.
20. *Id.* (providing that "[a]n employee who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises).
21. *Id.*
22. *Id.* at 362 (also noting that other portions of Wage Order 4 demonstrates language pointing to intent to incorporate federal law in certain areas, but such language is not mirrored in portions regarding "on-call time").

In its determination that Wage Order 4 does not permit the exclusion of sleep time from compensable hours worked in twenty-four hour shifts, the court rejected the court of appeal's reliance on *Monzon v. Schaefer Ambulance Service, Inc.*[23] on the basis that it dealt solely with ambulance drivers.[24] The court also disagreed with the *Monzon* court's reliance on 29 Code of Federal Regulations part 785.22 due to the absence of intent to incorporate it into Wage Order 4.[25]

In addition to limiting *Monzon*'s holding to its facts, the court disapproved *Seymore v. Metson*,[26] another case on which the court of appeal relied because like the *Monzon* court, the *Seymore* court improperly incorporated a federal standard absent convincing evidence of actual intent to incorporate it.[27]

The court concluded its discussion by acknowledging that the Division of Labor Standards Enforcement ("DLSE") seemed to have approved of Defendant's policy of excluding sleep time as complying with state law.[28] However, the court emphasized that while the DLSE administers and enforces California labor laws, it does not have the authority to enact laws and promulgate wage orders.[29]

Legal Significance

The weight of this decision falls onto the shoulders of employers. In this decision, the California Supreme Court has made clear that when employers exercise enough control over their on-call employees, they must appropriately compensate those employees. Moreover, *Mendiola*'s limiting *Monzon* to its facts prompts those employers who have entered into agreements with their employees to exclude sleep time from compensable hours worked in twenty-four hour shifts, to start paying their employees for sleep time.[30]

23. *Monzon*, 273 Cal. Rptr. 3d 615, 634 (Ct. App. 1990) (holding that an employer may enter into an agreement with an employee to exclude up to 8 hours of sleep time from compensable time on 24 hour shifts).
24. *Mendiola*, 340 P.3d at 363.
25. *Id.*
26. Seymore v. Metson Marine, Inc., 128 Cal. Rptr. 3d 13 (2011) (extending the holding in Monzon).
27. *Mendiola*, 340 P.3d at 364.
28. *Id.* at 365.
29. *Id.*
30. The author of this summary, Daniel Seu, is a Juris Doctor candidate, May 2015, at Western State College of Law.