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CALL ME MAYBE

By Vanessa Willis

Recently, the California Court of Appeal ruled in a split decision that employees subject to on-call scheduling must be paid reporting time pay, even when the employee only has to make a short call to determine if they are needed, but does not physically report to work. In *Ward v. Tilly's, Inc.*, Case Number B280151, the Court held that Tilly's on-call policy triggered the "Reporting Time Pay" provision of California's Wage Order 7, which applies to the retail industry. The *Ward* majority held that Wage Order 7's Reporting Time Pay provision applied because Tilly's workers "reported" for work when they called-in. The Court of Appeal significantly broadened the scope of California's reporting time pay requirement and expanded the types of circumstances in which it will be found to apply

In *Ward*, employees of Tilly's, Inc. were required to call-in two hours before the start of their scheduled shifts to see if they needed to come into work. If they were told to come in, the employees were paid for the shifts they worked; if not, they received no compensation for being "on call."

The Court held that this is "precisely the kind of abuse that reporting time pay was designed to discourage." "[O]n-call shifts burden employees, who cannot take other jobs, go to school or make social plans during on-call shifts — but who nonetheless receive no compensation from Tilly's unless they ultimately are called into work." Therefore, the Court concluded that reporting time pay is triggered even when an employee need not necessarily physically appear at the workplace to "report to work" because the employee is still "presenting oneself as ordered."

Accordingly, based on the Court's decision in *Ward*, an employee who is required to call-in two hours before his or her shift to confirm whether the employee is required to report to work, must be paid for half the employee's scheduled shift for the day, but in no event less than two hours nor more than four hours of pay.

In light of this ruling, any companies utilizing call-in or on-call scheduling policies in California may want to carefully consider their use. This ruling will have significant impact on the retail and restaurant industries among others in California. Employers should carefully review their call-in practices and reporting time pay policies to ensure they are legally compliant. The decision's interpretation of the phrase "report to work" has the potential to have much broader application in California, including with regard to newer technologies that are now more regularly being used by employers.