

Putting The Matter To Rest: California Court Rules Commission-Pay Employees Must Be Compensated Separately For Rest Breaks

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Delivering a stiff blow to a California retail furniture company employing commission-pay employees, the California Court of Appeals for the Second Circuit recently ruled that employees paid on a commission or piece-rate basis must be paid separately for their rest breaks. The decision in *Vaquero v. Stoneledge Furniture, LLC*, followed the filing of a class action suit by two commission-based sales associates at Stoneledge Furniture LLC, a retail furniture company doing business in California as Ashley Furniture HomeStores. The plaintiffs, Vaquero and Schaefer, were paid a guaranteed minimum hourly rate as an advance on commissions earned in later pay periods. Under this policy, however, they were not provided separate compensation for any non-selling time, such as rest periods. The plaintiffs filed a class action alleging the company failed to provide its sales associates paid rest periods under Labor Code section 226.7 and California Wage Order No. 7-2001, which applies to the mercantile industry. The trial court found in Stoneledge's favor and granted the company a motion for summary judgement. However, that ruling wasn't the end of the story. The appellate court later reversed the trial court's ruling on appeal. The court found that Stoneledge's policy *did* violate Wage Order No. 7 because even though the company authorized rest breaks, its commission policy for sales associates prevented these employees from earning wages during their rest periods. Accordingly, the court ruled Wage Order No. 7 required employers to separately compensate employees for rest periods "if an employer's compensation plan does not already include a minimum hourly wage for such time." This requirement covers employees "paid by commission" and employees paid by the piece rate, and applies even more widely to "any other compensation system that does not separately account for rest breaks and other nonproductive time." In light of this ruling, employers should be aware that if their current compensation structure does not separately account for employees' rest periods, such systems may violate California wage orders and must be scrutinized carefully to ensure compliance.

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