

Tick-Tock—Tick Tock

### Scheduled Overnight Shifts Not Entitled To Split Shift Pay

In *Securitas Security Services USA, Inc. v. Superior Court (Holland)* B227950 (July 7, 2011), the California Court of Appeal recently (and rationally) held that employees who work overnight shifts that begin on one workday and conclude on the next – but which are not interrupted by unpaid, non-working periods—are not working “split shifts” as defined by the applicable Industrial Welfare Commission Wage Order. As such, they are not entitled to overtime pay.

The plaintiffs are security guards who alleged a failure to pay split shift pay, among other violations. The alleged split shift at issue was: Working consecutive overnight shifts starting in the evening, and ending in the morning. Securitas (the employer) defined its workday to begin at midnight each day and ending the following midnight. As a result, the employees argued that by starting one shift in the evening (e.g., 10:00 p.m.) and ending the shift in the morning (e.g., 6:00 a.m.); they were working “split shifts.” Thus, if the employee again began work the next evening (albeit on the same workday some 16 hours later), they should be entitled to overtime pay.

The Court of Appeal appropriately rejected the plaintiff’s interpretation and held that split shift pay need not be paid in such circumstances involving “cross-over” or consecutive overnight shifts.

This is good news for California employers, such as security companies, who utilize a 24-hour workforce.

Under California law, employers must pay an additional hour’s pay for workdays where employees work a “split shift”. Wage Order No. 4 defines a “split shift” as “a work schedule” that is interrupted by non-paid nonworking periods established by the employer, other than bona fide rest or meal breaks. (*Cal. Code Regs.*, tit, 8 Sec. 11040, subd.2(Q).)

A “shift” is defined as “designated hours of work by an employee, with a designated beginning and quitting time.” (*Cal. Code Regs.*, tit.8 Sec. 11040, subd.2(P).)

A “workday” is defined as “any consecutive 24-hour period beginning at the same time each calendar day.” (*Id.*, sub. 2(T).)

In this case, the plaintiffs’ filed a class action and alleged that Securitas failed to pay mandatory split shift time. Securitas moved for summary adjudication and argued that an uninterrupted work shift spanning from midnight and falling on two days was not a split shift. The trial court denied Securitas motion, and Securitas appealed. The Court of Appeal agreed with Securitas and held that “work schedule” is not tied to the definition of “workday.” Instead, a work schedule “simply means an employee’s designated working hours or periods of work.” Accordingly, consecutive overnight shifts that overlap a defined “workday” do not create split shift because the “shift” is a contiguous block, even though it overlaps a “workday.”

(However, the Court did not find that Securitas was entitled to summary judgment after all, because there were triable issues of fact as to whether some putative class plaintiffs had worked split shifts *in other* circumstances falling within the IWC wage order definition.)

**LESSON:** It is okay to have your employees work a regular 8 hour shift, even if the shift crosses over to the new workday. So long as the employee only works 8 hours during that shift, there is no need to pay for overtime.