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Commission-Only Employees Entitled to Separately Paid Rest Periods

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A California Court of Appeal recently ruled that employers who pay their non-exempt sales employees on commission must separately compensate them for mandatory rest periods. All California employers with commission-based plans, especially those with commission-only pay, should carefully review their policies to ensure compliance with the court's holding.

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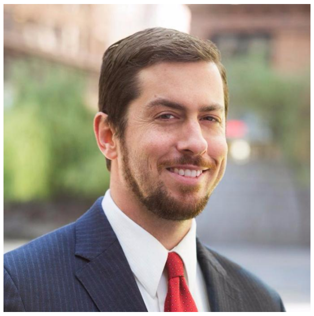

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Complying with California Law

In *Vaquero v. Stoneledge Furniture LLC*, the employer paid its salespersons solely on commission. If an associate failed to earn a minimum of $12.01 per hour in commissions in any pay period, the company would pay the associate a "draw" against future commissions. In subsequent pay periods, if the associate exceeded the $12.01 per hour minimum, the earlier "draw" was deducted from the associate's paycheck. The salespersons were not separately compensated for rest periods or other non-selling time, such as meetings and certain types of trainings. In determining whether an employee received at least $12.01 per hour, Stoneledge averaged all hours worked, including rest periods, to calculate the amount to be paid for commissions (or draws against those commissions).

Under California law, employers must authorize and permit uninterrupted rest periods of at least ten consecutive minutes for every four hours worked (or major fraction thereof). These rest periods are considered "hours worked" and while nonproductive, they must be compensated. The court in *Vaquero* ruled that Stoneledge's commission plan did not comply with the law because under its draw and deduction scheme, employees were not compensated for their rest breaks. Commission-based employees, the court reasoned, cannot earn commissions on their breaks because breaks, by definition, are nonproductive time. While commission-only employees' compensation is driven solely by their productivity, an employee paid by the hour is automatically compensated for his or her nonproductive time. For rest periods, the court did not consider Stoneledge's "draw" system to be compensation at all - instead, it viewed the draws as "interest-free loans" at best.

Commission-based plans are often tricky, and the *Vaquero* decision adds a new layer of complexity. Stoneledge eventually changed to a system in which it paid its salespersons an hourly minimum wage plus commission, but by then, it was too late for the company to escape liability for its earlier plan. Employers with commission-based plans are encouraged to consult with counsel to ensure compliance with all applicable laws, including the new *Vaquero* decision.

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