

Wage & Hour

Victoria's Secret to Pay \$12M to Settle Call-In Shift Case

Victoria's Secret will pay \$12 million to settle a lawsuit alleging it owes workers pay for times when they're scheduled to call the store to ask if they should report for work and are told to stay home.

A class of 43,669 retail personnel who worked in California between 2010 and 2017 will share the settlement (*Casas v. Victoria's Secret Stores, LLC*, C.D. Cal., No. 2:14-cv-06412, *final settlement approval* 11/20/17). They said they were required to call and report to the store two hours later if told to come in. They were disciplined if they didn't call when scheduled to do so, they said.

Judge George H. Wu of the U.S. District Court for the Central District of California dismissed the reporting time claim in 2014. The U.S. Court of Appeals for the Ninth Circuit heard oral argument in the workers' appeal in October 2016, but didn't issue a decision after the two sides subsequently reported they were close to a settlement.

The settlement leaves unresolved the question of whether the practice of "call-in scheduling" may trigger a worker-protection provision in California law. That law requires employers to provide a few hours of pay when an employee reports for a scheduled shift but is dismissed a short time later because business is slow. The issue is whether contacting a supervisor by telephone counts as reporting to work.

"My impression is that employers in California have stopped this practice," Michael Singer, an attorney with Cohelan Khoury & Singer in San Diego, told Bloomberg Law Nov. 22. "I haven't been approached as an employment practitioner by groups of people over this practice."

"The legal atmosphere did not look good for employers," said Singer, who co-wrote an amicus brief in the Ninth Circuit on behalf of the California Employment Lawyers Association and other worker advocacy organizations arguing that call-in scheduling tends to adversely affect shift workers. "They get smart and change their ways after a while."

Even though the Ninth Circuit won't decide whether a telephone call can trigger California's reporting time pay law in the Victoria's Secret case, the appeals court may have an opportunity to weigh the question in a second case. Judge Stanley A. Bastian of the U.S. District Court for the Eastern District of California Aug. 16 rejected apparel store Zumiez's motion to dismiss a claim for reporting time pay in connection with call-in shifts. Attorneys in that case have asked the Ninth Circuit to hear their appeal.

Cities and states have considered ways to ease the burden employees may face when they don't know until the last minute whether they will have to work on a particular day. That can make it difficult for them to plan for child care and other needs. A New York City law that requires retail employers to finalize staff schedules a few weeks in advance will take effect Nov. 26. Employers will be prohibited from requiring employees to call in and check whether they should report to the store less than 72 hours before the shift start time.

An attorney for the workers declined to speak about the case and a representative for Victoria's Secret didn't immediately respond to a request for comment. The settlement agreement includes a provision in which both sides agree to respond to inquiries by saying "the matter has resolved."

Stanley Saltzman, Stephen P. O'Dell, and David Leimbach with Marlin & Saltzman LLP in Agoura Hills, Calif., represented the workers.

Lori Bowman, Beth Gunn, and Jennifer Katz with Ogletree, Deakins, Nash, Smoak & Stewart P.C., in Los Angeles represented Victoria's Secret.

BY JON STEINGART

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Text of the final settlement approval is available at http://www.bloomberglaw.com/public/document/Mayra_Casas_v_Victorias_Secret_Stores_LLC_et_al_Docket_No_214cv06/1?doc_id=X1Q6NU3D1J82&imagename=109-1.pdf

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