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Wiley-JU, John Shepard, California Superior Court-Los Angeles County-CCW Courthouse-Wiley (311)	9/24/2013 6:05 AM PDT	MSA ruling	<p>SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES DEPARTMENT 311</p> <p>Meneses, et al. v. CVS Pharmacy, Inc., et al. BC 489739</p> <p>File and Serve Xpress</p> <p>MOTIONS FOR SUMMARY ADJUDICATION</p> <p>The plaintiff's motion is granted. The defense motion is denied. This ruling incorporates the discussion of these motions at oral argument, which was extensive and was transcribed.</p> <p>I</p> <p>The Labor Code contains two statutes:</p> <p>§ 551. One day's rest in seven Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven.</p> <p>§ 552. Maximum consecutive working days No employer of labor shall cause his employees to work more than six days in seven.</p> <p>These laws mean an employer cannot require workers to work more than six days in a row. Six is the "[m]aximum [number of] consecutive working days." Seven days in a row break these laws.</p> <p>This means there is a violation if the following occurs: You go to work. You end work. That is day one. The next day, you go to work. You end work. That is day two. The next day, you go to work. You end work. That is day three. The next day, you go to work. You end work. That is day four. The next day, you go to work. You end work. That is day five. The next day, you go to work. You end work. That is day six The next day, you go to work. You end work. That is day seven.</p> <p>Work on day seven breaks the law. Seven is more than six. Six is the "[m]aximum [number of] consecutive working days."</p> <p>This law is simple. The rule it codifies is old. (See Genesis 2:2.)</p> <p>Defining "workweek" is not relevant to sections 551 and 552. These laws do not use this term.</p>	Reply

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			<p>The decision in <i>Seymore v. Metson Marine, Inc.</i> (2011) 194 Cal.App.4th 361 does not mention sections 551 or 552. <i>Seymore</i> is not pertinent to this portion of the analysis.</p> <p>II</p> <p>A</p> <p>Section 853 sets the maximum fine for violating Chapter Five of Part Two of Division Two of the Labor Code. The maximum fine is \$100. This means that, every time someone violates Chapter Five, that person can be fined up to \$100.</p> <p>If the person violates Chapter Five two times, they can be fined up to two times \$100, or \$200. And so forth.</p> <p>If an employer violates Chapter Five 1000 times (by virtue of, say, 1000 employees), then the maximum is 1000 times \$100, or \$100,000.</p> <p>The statute does not say that one violation immunizes you so that, no matter how often you break the law, you never pay more than \$100. This is the interpretation CVS urges, and it is incorrect. It adds words to the statute that are not there, and quite unconventional words they would be.</p> <p>For instance, robbery of the second degree is punishable by imprisonment in the state prison for a maximum of five years. (Penal Code, section 213, subd. (b)(2).) This does not mean that you can rob TWO banks and insist that your maximum penalty is five years, tops.</p> <p>CVS offers no precedent for the notion that, if you break the criminal law once, then you can do it again and again for free.</p> <p>The phrasing of other statutes passed at other times does not change the plain meaning of this law. Legislators writing years and decades apart may state the same concept in different words. This is common and permissible. Judges have no power to impose mandatory phrasing uniformity on a coordinate branch of government.</p> <p>B</p> <p>Perhaps what CVS means to argue here is that there is a question about whether "violat[ing]" the statute is an instantaneous act or whether it involves a continuous course of conduct. As stated in <i>People v. Gunn</i> (1987) 197 Cal.App.3d 408, 415:</p> <p>"[C]ertain verbs in the English language denote conduct which occurs instantaneously, while other verbs denote conduct which can occur either in an instant or over a period of time. Thus, the Legislature has defined burglary as occurring when a person enters a defined structure with felonious intent. (Pen. Code, § 459.) The crime is completed at the moment the person enters the structure. (See <i>People v. Brady</i> (1987) 190 Cal.App.3d 124, 133.) By its choice of the verb 'enters,' the Legislature intended to prohibit a certain type of conduct which is instantaneous in nature. On the other hand, a</p>

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			<p>person may derive support from a prostitute either in one moment in time, when the prostitute first turns over the proceeds of her business, or over the course of many moments in time, if she continues to do so. Common sense tells us certain types of conduct occur instantaneously, such as murder, burglary, battery or sodomy, while other types of conduct may be committed in one moment or over a period of time, such as child abuse, spousal abuse or contributing to the delinquency of a minor."</p> <p>Section 852 of the Labor Code reads as follows.</p> <p>§ 852. Weekly day of rest</p> <p>The employer shall apportion the periods of rest to be taken by an employee so that the employee will have one complete day of rest during each week.</p> <p>This statute identifies a particular victim -- "an employee" -- and a particular event: "one complete day of rest." "Common sense tells us certain types of conduct occur instantaneously, such as murder, burglary, battery or sodomy, while other types of conduct may be committed in one moment or over a period of time, such as child abuse, spousal abuse or contributing to the delinquency of a minor." People v. Gunn, supra, 197 Cal.App.3d 408, 415.</p> <p>The statutory language suggests this violation occurs at the moment an employee's right are violated by her or his reporting for a day of work on what should be a day of rest.</p> <p>CVS argues a violation occurred once, for the whole class, for the entire duration of the class. CVS offers no authority or logic to support this suggestion. Apparently the argument is that there was one act of abuse that victimized many people and that lasted for years.</p> <p>The Legislature has written statutes that outlaw continuance action over time, but these statutes typically are rather clear about this important feature. (See, e.g., Penal Code 288.5 ("Continuous sexual abuse of a child. (a) Any person who either resides in the same home with the minor child or has recurring access to the child, who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child under the age of 14 years . . . or three or more acts of lewd or lascivious conduct . . . with a child under the age of 14 years . . . is guilty of the offense of continuous sexual abuse of a child and shall be punished by imprisonment in the state prison for a term of 6, 12, or 16 years. (b) To convict under this section the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred not on which acts constitute the requisite number.").)</p> <p>In addition to crimes that extend over time, there also are crimes that victimize many people in one swoop. A single bank robbery can victimize many people at once, for instance, if the robbers decide to rob the .</p> <p>But is there any crime where more than one person is victimized</p>

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			<p>over a period of years? Conspiracies can be long lasting and can victimize many, but conspiracy is an open-ended crime of agreement. This statute is not of this kind.</p> <p>Apart from conspiracy, this court cannot think of a crime that lasts for years and victimizes a group. At oral argument, CVS could not give an example of any such crime. Apparently, CVS's suggested interpretation is unprecedented. It seems simply incorrect. The court does not accept this proposed interpretation.</p>

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