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September 15, 2026

RLS PRINCIPAL JACOB KALINSKI AND LABOR LITIGATION GROUP WIN MAJOR PUBLISHED COURT OF APPEAL DECISION

In a significant decision with potential impact on employees throughout the state, the Court of Appeal has taken the important step of publishing its Opinion in favor of two RLS clients—meaning the case is now California law. If you work in an agency governed by the County Employees Retirement Law of 1937 ("CERL"), this Opinion may impact the way your normal working hours are determined, which is important because hours outside of your normal working hours are excluded from your pension calculation.

On August 14, 2026, the Fourth District issued an Opinion in favor of retired Orange County Deputies Robert Szewczyk (pronounced "Chef-Shick") and Rodney Morikawa. RLS principal Jacob A. Kalinski and our Labor Litigation Team represented the deputies.

Szewczyk and Morikawa each retired while in the classification of Deputy Sheriff II and worked in corrections, where they were mandated to work on a platoon schedule consisting of seven 11.5-hour shifts in each two-week period. As a result, they worked 80.5 hours every two weeks, which created an extra half-hour of overtime coded as "6FE pay."

Following a reorganization of the Orange County Sheriff's Department in 2008, Deputy Sheriff IIs were assigned to work patrol, while Deputy Sheriff Is worked in corrections. Upon the reorganization, Szewczyk and Morikawa accepted a one-time option to remain working in corrections, while keeping their Deputy Sheriff II classification and attendant pay.

Upon their retirement, Szewczyk and Morikawa requested that the 6FE pay be considered pensionable, because the half-hour in which it was earned was mandatory and was ordinarily worked by others in the same grade or class, in this case, Custody Deputies. OCERS was unwilling to do so because the vast majority of Deputy Sheriff IIs worked in patrol assignments where they were not required to work this additional half-hour of overtime. Thus, OCERS determined that the 6FE pay was "not 'ordinarily worked by persons in the same grade or class'" and did not meet the definition of "compensation earnable," the term used to establish what is "pensionable" in subdivision (a) of Section 31461.

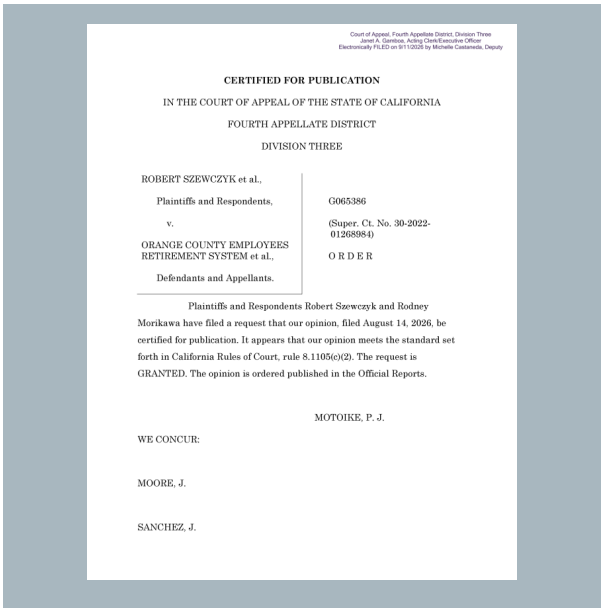
In reaching its conclusion, the Court of Appeal instructed retirement systems to look to the number of days 'ordinarily' worked by *comparable employees*—that is, persons in the same grade or class of positions during the period, and at the same base rate of pay to determine the number of workdays over which that rate of pay is applied, which requires a calculation looking

to “the average number of days ordinarily worked by an employee’s peers during the final compensation period.”

Given that Szewczyk and Morikawa were in the civil service classification of Deputy Sheriff II and assigned to jail operations, but recognizing that Deputy Sheriff IIs working patrol had “different job duties, unit requirements, work locations and schedules,” the Court found the record supported the trial court’s finding that Deputy Sheriff IIs in jail operations, were “not ‘comparable’” to Deputy Sheriff IIs working patrol, and thus should not be compared to them for purposes of determining compensation earnable. The Court held that the 6FE pay for Custody Deputies like Szewczyk and Morikawa constitutes premium pay for hours worked within the normally scheduled or regular working hours in excess of the maximum work period of the Fair Labor Standards Act. It thus affirmed the Superior Court’s conclusion that 6FE pay must be included in Szewczyk’s and Morikawa’s compensation earnable.

This ruling is important because OCERS had argued that employees’ regularly scheduled hours could only be determined based on their classification, absent an express enactment from the County. In other words, in determining an employee’s normal working hours, OCERS contended that those hours must be established by classification regardless of whether the duties performed are similar to others in that classification. Thus, in future cases, where a group of employees receives compensation for mandatory work performed by individuals with comparable job duties and schedules, this compensation can be pensionable even if the entire group does not fit neatly into one civil service classification. This is especially crucial in agencies where there are very few distinct classifications and where many employees who perform vastly different duties are all characterized as, for example, Deputy Sheriff.

A copy of the Court’s Opinion and Publication Order can be viewed at this **link**. The Association of Orange County Deputy Sheriffs vigorously supported Szewczyk’s and Morikawa’s contentions throughout the case. If you would like to discuss how this may impact your Association, please contact your RLS Labor Representative.



Court of Appeal, Fourth Appellate District, Division Three
Jared A. Gamboa, Acting Clerk/Executive Officer
Electronically FILED on 9/11/2026 by Michelle Castaneda, Deputy

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ROBERT SZEWCZYK et al.,

Plaintiffs and Respondents,

v.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM et al.,

Defendants and Appellants.

G065386

(Super. Ct. No. 30-2022-01268984)

O R D E R

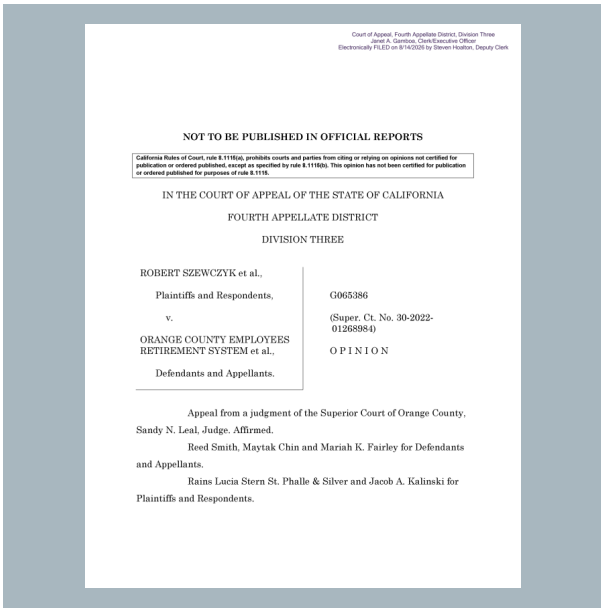
Plaintiffs and Respondents Robert Szewczyk and Rodney Morikawa have filed a request that our opinion, filed August 14, 2026, be certified for publication. It appears that our opinion meets the standard set forth in California Rules of Court, rule 8.1105(c)(2). The request is GRANTED. The opinion is ordered published in the Official Reports.

MOTOIKE, P. J.

WE CONCUR:

MOORE, J.

SANCHEZ, J.



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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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G065386

(Super. Ct. No. 30-2022-01268984)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sandy N. Leal, Judge. Affirmed.

Reed Smith, Maytak Chin and Mariah K. Fairley for Defendants and Appellants.

Rains Lucia Stern St. Phalle & Silver and Jacob A. Kalinski for Plaintiffs and Respondents.

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*Authored by **Jacob A. Kalinski**. Jacob is a principal and the managing partner of Rains Lucia Stern St. Phalle & Silver, PC’s Southern California practice. Additionally, Jacob heads the Labor Litigation Group where he oversees the firm’s representation of public employee associations and individual clients in various types of civil litigation to enforce their contractual and statutory rights. Jacob can be reached at **JKalinski@RLSlawyers.com***

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