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Labor & Employment Alert

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California Supreme Court characterizes break “premiums” as wages

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The California Supreme Court just tripled the liability in most wage and hour lawsuits—by redefining unpaid meal and rest break “premiums” as unpaid “wages.”



What's the Impact?

- / California law punishes the failure to pay earned wages much more severely than the failure to pay penalties—this redefinition of premiums as wages means the more severe penalty scheme now applies to meal and rest break claims
- / This decision is *Christmas in Summer* for the plaintiffs' bar; it both increases the liability in each case and makes them more difficult to defend
- / If the plaintiffs' bar hasn't found you yet, they're definitely coming for you now; and if you've been hit before, they'll probably be coming back—review your policies and get good counsel; sadly, you're going to need it

If you're a California employer, you're probably already familiar with the state's highly technical meal break and rest period rules. Meal breaks must be 30 minutes, duty free, uninterrupted, and must begin before the end of the fifth hour of work. Rest periods must be 10 minutes, duty free, uninterrupted, and be taken in the middle of each four-hour period of time, when practicable. If

you fail to adhere to these rules, you could be liable for up to one meal break and one rest break “premium” per day. That premium is defined by Labor Code section 226.7 as “one additional hour of pay at the employee’s regular rate of compensation.” Whether these premiums are classified as “penalties” or “wages” have serious implications for employers in wage and hour lawsuits, and was the question presented to the California Supreme Court recently in *Naranjo v. Spectrum Security Services, Inc.*

On May 23, 2022, the California Supreme Court found that premiums for non-compliant meal and rest breaks under California law are “wages” and not “penalties,” thereby overturning the California Court of Appeals.

In 2019, the Court of Appeals held that premiums were penalties because they were not a payment for hours worked. Indeed, the statutory requirement is a 30-minute off-duty meal break or 10 off-duty minutes for a rest period. The premium, on the other hand, is an hour of pay regardless of whether a break was late, short, missed, or interrupted—i.e., there is no mathematical relationship between the amount of the premium and the reason it is awarded. It’s the same amount whether a break is short by one second or one minute, or whether an employee has to work for 5 seconds or 5 minutes during the break. Thus, meal and rest premiums are unlike overtime premiums, and they always have been. To get around this straight-forward and time-honored logic, the supreme court invented a new kind of compensation under California law, a wage-penalty hybrid. And the ruling applies retroactively.

The California Supreme Court characterized meal and rest break premiums under Labor Code section 226.7 as both “wages” and statutory penalties, reasoning that “an employee becomes entitled to premium pay for missed or noncompliant meal and rest breaks precisely because she was required to work when she should have been relieved of duty.” This analysis conveniently ignores the fact that employers already would have an obligation to pay employees for any time worked during a meal or rest break.

Regardless, now the law is that “premiums are wages,” and it is not just an academic or semantic point. The supreme court’s characterization of break premiums as wages means that failure to pay them is tantamount to a failure to pay earned wages, which leads to a “parade of horrors” under the Labor Code. This is because the Labor Code punishes the non-payment of wages in several ways that are sometimes called “derivative penalties”—for violations such as a failure to pay wages timely during employment (Lab. Code 204); failure to issue accurate itemized paystubs (Lab. Code 226), failure to pay all wages upon separation of employment (Lab. Code 201-203), and more.

The practical (and negative) implications for employers in this legal landscape are hard to overstate. In most wage and hour lawsuits, the amount of alleged unpaid wages pales in comparison to the alleged unpaid meal and rest break premiums. But now, as explained above, the (new) hybrid wage-penalty-premium is a full hour of pay at the employee’s regular rate of compensation, regardless of whether a meal break was one minute late, or a rest period was interrupted by one minute of work, etc. Moreover, employers generally have “hard” evidence to defeat a *true* unpaid wages claim (e.g., using time clock records and/or shift schedules).

However, no such “hard” evidence exists to defeat many theories of meal and rest break violations, which often require employers to “prove a negative”—i.e., that a meal break or rest break was not interrupted.

Takeaways for employers

The California Supreme Court just made meal break and rest or break claims much harder for employers to defend, and exponentially more expensive if lost. So now more than ever, California employers should re-evaluate their policies and practices related to meal and rest periods, timekeeping, and itemized wage statements to ensure maximal compliance with the law.

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