



California Wage/Hour Update

Court Rules On Premium Payments For Denied Meal And Rest Periods

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California law regulates meal and rest periods, requiring employers to provide their employees an unpaid 30-minute meal period after working for five hours, and a second meal period after 10 hours, with a 10-minute rest period for each four hours of work or major fraction thereof. Employees required to work through their breaks are entitled to a premium payment subject to a limit each day.

Although both the California Labor Commissioner's enforcement position and a federal decision interpret the law to require a maximum of one premium per day for each category of violation (maximum of two), this limit has been disputed by employers.

A California Court of Appeals decision recently concluded that state law permits up to two premium payments per work day, per employee, one each for meal period and rest period violations. The court rejected the employer's argument that the law provides no more than a single premium payment per work day, even if the employer may have failed to provide both a meal *and* rest period in a particular day. *UPS, Inc. v. Superior Court (William Allen)*.

Background

The law at issue provides that

- no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission (IWC); and
- if an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay

the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

Rather than addressing the meal and rest period requirements in one section, the IWC issued Wage Orders in 2000 that address meal periods and rest periods in separate sections. Due to the ambiguity in the statute, the parties disputed whether the regulation permitted a maximum of two premium payments per work day or just one.

The Appellate Court's Decision

The appellate court, in a unanimous three-judge decision, relied upon *Marlo v. United Parcel Service, Inc.*, an unpublished 2009 federal court decision, addressing the same argument. The court in *Marlo* determined that two premium payments were authorized where an employee was denied a rest period *and* a meal period. The decision employed the same analysis as the court in *Marlo* and reached the same conclusion.

Conclusion

Some aspects of the meal and rest period laws still remain unsettled, including the meaning of "providing" a meal period and the timing of when meal periods should be taken during the work day. Those issues should soon be addressed by the California Supreme Court.

In the meantime, you can help avoid potential litigation by ensuring that all employees are provided with a 30-minute duty-free meal period if they work more than five hours in a day, and a second meal period if they work more than 10 hours in a day. Questions regarding timing of meal periods during the day are best directed to legal counsel.

To help avoid disputes, meal periods should be provided, where possible, before an employee works more than five hours in a typical eight-hour work day. Employers seeking to honor an employee's request for a meal-period waiver or an on-duty meal period agreement should first consult with legal counsel.

Finally, be mindful of rest period requirements, providing all employees with the opportunity to take a 10-minute paid rest period for every four hours worked.

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