



Please contact the authors below or any of the attorneys in our [Labor and Employment Group](#) if you have any questions regarding this alert.

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## Missed Meal and Rest Breaks Can Add Up For California Employers

The California Court of Appeal added yet another wrinkle to California's wage and hour laws. On February 16, 2011, in *United Parcel Service. v. Superior Court*, the appellate court held that the California Labor Code allows employees to recover up to two premium payments (or two additional hours of pay) for meal and rest period violations on a single work day, one for failure to provide a meal period and another for failure to provide a rest break.

#### Background on Case Law

California Labor Code section 226.7 ("Section 226.7") requires an employer who fails to provide a meal or rest period to pay that employee one additional hour of pay "for each work day that the meal or rest period is not provided." Relying on the statute's language, "for each work day," UPS moved to make a pretrial determination that only one premium payment is allowable per work day pursuant to Section 226.7, regardless of the number or type of break periods that were not provided. The appellate court, however, disagreed and held that "Section 226.7 permits up to two premium payments per work day."

#### The Court's Decision

In reaching this holding, the court first looked to the statute itself and determined that although the statute considers missed rest breaks and meal breaks in the same section, the statute utilizes the language "meal or rest period." The court reasoned that the use of the term "or" allowed for a conclusion that there can be two separate violations with a penalty of an additional hour of pay where an employer fails to provide both a meal and a rest break. The court further relied on the IWC Wage Orders, which treat meal breaks and rest breaks in separate sections, each section providing for an additional hour of pay per work day. Finally, the court relied on the legislative intent behind Section 226.7 which was designed to require compliance with the labor code.

#### Impact on Employers

This decision could dramatically increase the value of individual labor claims and wage and hour class actions. This court ruling is yet another reminder to employers that they take every measure possible in providing meal and rest periods to employees.

Please contact [Rebecca Aragon](#) or [Noah Steinsapir](#) regarding any questions concerning this ruling on meal and rest break compliance.

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