

Labor and Employment Law Update **Lawyers for Employers®**

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Washington Employers Required to Pay Overtime for Some Missed Rest Periods

Regulations promulgated by the Department of Labor and Industries (“L&I”) under the Washington Minimum Wage Act require employers to provide most non-exempt employees with a paid rest period of at least ten minutes for every four hours worked. If a covered employee works through or is required to return to work during a rest period, the employee is entitled to take the remainder of the rest period later or must be compensated for the missed rest period.

On October 25, 2012, in *Washington State Nurses Association v. Sacred Heart Medical Center*, the Washington Supreme Court unanimously held that the Washington Minimum Wage Act requires employers to pay one and one-half times the employee’s regular rate of pay (i.e., “overtime pay”) for any “worked through” rest period that results in the employee’s workweek exceeding 40 hours.

In this case, a collective bargaining agreement between the Washington State Nurses Association (“WSNA”) and Sacred Heart provided nurses with a paid 15-minute rest period for every four hours worked. Sacred Heart paid nurses 30 minutes of straight time for any missed rest period, but did not include the time nurses worked through the rest period into its calculation of “hours worked” for determining entitlement to overtime pay. WSNA argued that Sacred Heart needed to calculate missed rest periods into the nurses’ “hours worked” and provide overtime pay for any missed rest period that caused the nurses to exceed a 40-hour workweek. The Washington Supreme Court agreed, holding that time worked during missed rest periods constitutes “hours worked,” which extend the nurses’ workday and which must be included when calculating “hours worked” for overtime compensation. The Supreme Court also held that Sacred Heart was required to pay WSNA’s attorneys’ fees and costs, relying on RCW 49.48.030 and RCW 49.46.090(1). However, the Supreme Court reversed the trial court’s ruling that the nurses were entitled to double the amount of missed overtime pay, concluding that: (i) Sacred Heart had complied in good faith with the collective bargaining agreement and a prior arbitration award approving the payment of “straight time” pay for the missed rest periods, and (ii) there was a “bona fide dispute” between Sacred Heart and WSNA regarding the appropriate method of compensation for the missed rest periods.

What This Means for Employers

It is important for employers to fully understand how the rest period provisions apply in their industry and workplace. Litigation involving missed meal and rest periods appears to be trending upwards. Employers should review their policies and practices related to meal and rest periods to ensure that non-exempt employees receive required meal and rest periods and are properly compensated if they miss their breaks, particularly if the additional time worked creates overtime exposure. An employer's "willful" failure to pay all wages due to an employee will result in double the amount of unpaid wages being awarded to the employee. Employers should also be mindful that the Washington Minimum Wage Act requires accurate record-keeping of all non-exempt employees' straight and overtime hours. Thus, we encourage employers to review their recording-keeping practices to ensure compliance and avoid penalties.

For more information, please contact the Labor and Employment Practice Group at Lane Powell: employlaw@lanepowell.com

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