

California Supreme Court Rejects On-Call Rest Breaks

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The California Supreme Court recently issued a significant opinion regarding the issue of off-duty rest breaks in *Augustus v. ABM Security Services, Inc.* (Dec. 22, 2016). The Court, in the context of employees being required to be on-call during rest breaks, determined that during rest breaks, employees must be relieved of **all** duties except in certain specified situations.

During rest breaks, ABM required its security guards to keep their radios and pagers on, remain vigilant, and respond when needs arose. Plaintiff Jennifer Augustus filed a putative class action on behalf of all ABM security guards, alleging that such duties caused ABM's rest breaks to be noncompliant. The trial court granted Plaintiff's summary judgment motion and awarded approximately \$90 million in statutory damages, interest and penalties. The Court of Appeal reversed, concluding that employers are not required to provide off-duty rest periods, and being on-call does not constitute performing work. However, much to the chagrin of California employers, the Supreme Court reversed, finding that an employer's requirement to remain "on-call" during a rest period does not satisfy the obligation for uninterrupted rest breaks.

In the opinion, the Court inferred that Wage Order 4 required employers to authorize off-duty rest periods, and determined that Labor Code section 226.7's prohibition of the performance of "work" during both meal and rest periods reinforced such inference. The Court went on to define "rest period" as "an interval of time free from labor, work or any other employment-related duties," wherein an employee is "relieved of work duties [and] ... freed from employer control over how they spend their time." Employer-imposed "duties" during the rest break, such as requiring an employee to carry a device and respond when the employer seeks contact, are "irreconcilable with employees' retention of freedom to use rest periods for their own purposes."

The findings appear to be fact-specific, as the Court did not discuss other defenses to rest break violation allegations and did not prohibit on-premises rest break requirements, due to the "practical limitations" of a 10-minute break. The Court provided instructions to employers in situations when "unexpected circumstances such as emergencies" arise:

- Reschedule the rest break;
- Provide another rest break to replace an interrupted one; and/or
- Pay premium pay.

In light of this decision, employers should audit current policies and practices to ensure that during rest breaks, employees are relieved of all duties and are not required to be on-call.

If you have questions about this Client Alert, please contact Madonna Herman Graham or the Buchalter lawyer with whom you normally consult.



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