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California Supreme Court Prohibits Rounding for Meal Periods

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On February 25, 2021, the Supreme Court of California issued its unanimous opinion in *Donohue v. AMN Services, LLC*, and decided two questions of law relating to meal periods.

First, the Court held that employers cannot engage in the practice of rounding time punches — that is, adjusting the hours that an employee has actually worked to the nearest preset time increment — in the meal period context.

Under California law, employers must generally provide employees with one 30-minute meal period that begins no later than the end of the fifth hour of work and another 30-minute meal period that begins no later than the end of the tenth hour of work. The employer's duty is to ensure that it provides the employee with bona fide relief from duty and that this is accurately reflected in the employer's time records. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 (“*Brinker*”)) The employer is not liable if the employee chooses to take a short or delayed meal period or no meal period at all. The employer is not required to police meal periods to make sure no work is performed. Instead, an employer is liable only if it does not provide an employee with the opportunity to take a compliant meal period.

If an employer does not provide an employee with a compliant meal period, then “the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal . . . period is not provided.” (Lab. Code, § 226.7, subd. (c); Wage Order No. 4, § 11(B).) In addition to providing premium pay, the employer must compensate the employee for any time worked during the meal period if it knew or reasonably should have known that the worker was working through the authorized meal period. (See *Brinker*.)

The Court reasoned that these meal period provisions are designed to prevent even minor infringements on meal period requirements, and rounding is incompatible with that objective. In particular, the precision of the time requirements — “not less than 30 minutes” and “five hours per day” or “ten hours per day” — is at odds with the imprecise calculations that rounding involves. By requiring premium pay for any violation, no matter how minor, the meal period provisions make clear that employers must provide compliant meal periods whenever such a period is triggered.

The Court provided the following example of how small rounding errors can amount to a significant infringement on an employee's right to a 30-minute meal period: An employee who is provided with a 21-minute lunch from 12:04 p.m. to 12:25 p.m. Under a timekeeping system which rounded time punches to the nearest 10-minute increment, the lunch would have been recorded as a 30-minute lunch from 12:00 p.m. to 12:30 p.m. In that scenario, an employee would have lost nine of the 30 minutes — or almost a third of the time — to which he or she was entitled, and if the timekeeping system does not have flag the lunch as a meal period violation, the employee is not properly compensated with a meal period premium.

Notably, the Court rejected the argument that an employee under this example would be compensated based on time worked. The premise of this approach is that even relatively minor infringements on meal periods can cause substantial burdens to the employee. The Court explained that forcing employees to work through their meal periods not only causes economic burdens in the form of extra work but also noneconomic burdens on the employees' health, safety, and well-being.

Second, the Court held that time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations. This means that an employee can raise the presumption of liability for meal period violations by pointing to time records that show noncompliant meal periods. No other showing is required. This places the burden on the employer to plead and prove, as an affirmative defense, that it genuinely relieved employees from duty during meal periods. This burden underscores the importance of keeping accurate time records.

In light of the Court's ruling, employers should evaluate their timekeeping systems to ensure that meal period premiums are paid as strictly required under the law. In addition, employers should review their current system of documenting an employee's decision to voluntarily waive a meal period. Please contact a Buchalter attorney for assistance.



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