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***Naranjo v. Spectrum Security Services, Inc.*: The California Supreme Court Determines that Meal and Rest Premiums are Wages and Employers Must Make Sure Wage Statements and Final Pay Accurately Reflect all Due and Owing Meal and Rest Period Premiums**

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On May 23 2022, the California Supreme Court reversed the Second Appellate District Court of Appeal and made clear that meal and rest period premiums (or "extra pay" or "premium pay")¹ constitute "wages" and must be accurately reflected on an employee's wage statement and accurately paid to the employee during the employee's final pay out. (*See Naranjo v. Spectrum Security Services, Inc.*, (2022) 2022 Cal. LEXIS 2878; Cal. Lab. Code § 226 [setting forth the requirement for employers to furnish accurate wage statements]; and Cal. Lab. Code § 203 [setting forth the requirements for the timely distribution of all wages earned upon an employee's departure from a job].)

Before *Naranjo* made its way to the California Supreme Court, the Second Appellate District Court of Appeal originally held, that as a matter of law, Labor Code section 226.7 missed-break premium pay is not a "wage" for purposes of Labor Code sections 203 and 226. (*See Naranjo, supra*, 2022 Cal. LEXIS 2878 at *48.) The Court of Appeal went on to hold that the failure to timely pay or report such payments can never support penalties under either section 203 or 226.

The California Supreme Court, reversed The Court of Appeal and specifically held that a failure to timely pay or report section 226.7 premium pay can support relief under Labor Code sections 203 and 226. (*Ibid.*)

In reaching its ruling, the California Supreme Court explained that while the "premium pay" from missed meal and rest periods is intended to compensate the employee for a missed break (meal or rest), the "premium pay" also serves as compensation for the work that the employee performed during the break period (meal or rest). Accordingly, the "premium pay" takes the form of a wage and is subject to the same timing and reporting rules applying to wages earned. (*See Naranjo, supra*, 2022 Cal. LEXIS 2878 at *3.) The California Supreme Court in *Naranjo*, relied heavily on the reasoning contained in *Murphy v. Kenneth Cole Productions* in holding that "premium pay" compensates employees for work performed during a missed break period, and is therefore a wage. (*See Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104.)

Ultimately, the California Supreme Court remanded *Naranjo* back to the Court of Appeal to determine if any missed-break "premium pay" supported any derivative Section 203 waiting time penalties, or Section

¹ California Labor Code section 226.7 outlines the requirements for missed-break premium pay. (*See* Cal. Lab. Code § 226.7.)

226 wage statement penalties where the relevant conditions for imposing penalties are met. (*See Naranjo, supra*, 2022 Cal. LEXIS 2878 at *48.)

The California Supreme Court's ruling in *Naranjo* is impactful for employers for several reasons. First, *Naranjo* adds yet another requirement for employers and their payroll operators to ensure that even the inadvertent missed reporting of meal premiums are accurately reflected on wage statements to avoid liability under Labor Code section 226. This new reporting requirement will require additional diligence by human resources departments and employees alike to ensure that "premium pay" is accurately captured on all wage statements. (*See* Cal. Lab. Code § 226.)

Second, employers should look at their current timekeeping policies and determine if any revisions are necessary in order to fully comply with the new reporting requirement outlined in *Naranjo*. Consistent and equally applied timekeeping policies are the best way to reduce risk and limit exposure to wage and hour litigation.

Third, now employers must ensure that when an employee leaves a job either through termination, resignation or otherwise that the departing employee's "premium pay" is accurately paid out to the employee under the appropriate statutory framework. (*See* Cal. Lab. Code § 201 [explaining that employees discharged/terminated from their employment must be paid all wages earned and unpaid at the time of discharge and are due and payable immediately]; Cal. Lab. Code § 202 [explaining that employees who resign are due unpaid wages immediately at the time of quitting, if the employee has given sufficient advance notice, and within 72 hours if the employee has not.].) In addition to Labor Code sections 201 and 202, there are specific Industrial Work Orders that apply to specific industries, regarding the timing of final pay. Companies should consult with their employment attorney on which "final pay" timing period applies to a specific departing employee.

If an employer does not accurately or timely pay out all wages due and owing, Labor Code section 203 provides recourse to an employee who was not timely or accurately paid upon leaving their job (commonly referred to as "waiting time penalties"). Under Labor Code section 203, a "waiting time penalty" consist of the daily wages of an employee for every day the employee is not paid correctly dating from the due date of the wages, until either: 1) the wages are paid; 2) the employee initiates an "action;" or 3) up to a maximum of 30-days after the wages were due and owing. (*See* Cal. Lab. Code § 203.) Under *Naranjo*, now unpaid meal and rest premiums will be factored into any potential waiting time penalty calculations under Labor Code section 203, as the "premium pay" now constitutes wages that are due and owing when the employee leaves their former employment. (*See e.g.* Cal. Lab. Code §§ 201-202.)

Fourth, the new requirements imposed by *Naranjo* also create additional avenues for plaintiff attorneys and employees to manufacture Private Attorneys General Act ("PAGA") claims on a representative basis, and seek relief through the class action context.

California's wage and hour requirements have always posed significant hurdles and costs for employers. *Naranjo* only furthers the increased vigilance which employers must operate with in order to ensure that inadvertent errors do not cause unnecessary litigation or disproportionate exposure.

Buchalter's Labor and Employment attorneys are abreast of the latest developments in California and federal employment law. The Firm's attorneys are able to assist employers with compliant California and federal timekeeping policies, along with workplace investigations, and employment litigation – both class action, PAGA, and single plaintiff cases.



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