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Just Eat It: California's Meal Break Rules

CALIFORNIA'S LAW REGARDING MEAL breaks was codified into the Labor Code over 20 years ago, but not all employers have a firm grasp on the intricacies in the law.

Guided by rulings from the California Supreme Court, the principles discussed in this article should help employers better understand their obligations when it comes to providing meal breaks to employees.

What the Code Says

Generally, the California Labor Code (CLC) prohibits employers from requiring non-exempt employees to "work ... more than five (5) hours without a meal period of not less than 30 minutes."¹

Employers who violate this rule must pay a penalty equal to one additional hour of pay at the employee's

regular rate of compensation for each work day that a compliant break is not provided.

Since the codification of the Code's meal period requirement approximately 20 years ago, the California Supreme Court has issued several decisions to fine tune the meal period requirements.²

On February 25, 2021, the California Supreme Court issued its most recent decision, reiterating the importance of strict compliance with the CLC.³

Previous Supreme Court meal period decisions provide context and assist in understanding California's meal break requirements.⁴

In 2012, the state Supreme Court issued its seminal decision in *Brinker Restaurant Corp. v. Superior Court*.⁵

But, while that case provided valuable guidance on both meal and rest periods, this article will only focus on the Court's meal break holding.



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Meal Period Timing

In its ruling, the Court concluded that, absent a waiver, the Labor Code requires a first meal period no later than the end of an employee's fifth hour of work and a second meal period no later than the end of an employee's tenth hour of work.^{6,7}

The Court further clarified that an early lunch does not trigger a requirement for a second meal period in a shift shorter than ten hours, such as when there is more than five hours between the end of the meal period and the end of the shift.

Rather, the law "requires a second meal after no more than ten hours of work; it does not add the caveat 'or less, if the first meal period occurs earlier than the end of five hours of work'."⁸

Employers are not the "Meal Police"

Brinker also clarified that employers are not obligated to police meal breaks and ensure no work is performed during the break.⁹

In that case, the Court held that, "There was no textual basis in the wage order or statute to the argument that employers must ensure no work is done, and that that argument is inconsistent with the fundamental employer obligation that is associated with a meal break, which is simply to relieve employees of duty and relinquish control over employees and how they spend the time."¹⁰

The Murphy Story

A couple of years before *Brinker*, the Supreme Court weighed in on how to characterize the penalty owed to an employee when a compliant break is not provided.

As explained above, California law provides that, "If an employer fails to provide an employee a meal period or rest period...the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation."¹¹

This means that for every day an employee is prevented from taking a timely and/or full break, the employee is entitled to a premium pay equal to one additional hour of pay.

In *Murphy v. Kenneth Cole Productions, Inc.*, the Supreme Court was asked to decide if the "one additional hour of pay" mandate is a penalty subject to the one-year statute of limitations or wages subject to the three-year statute of limitations.^{12 13 14}

The Court decided that the penalty is to be considered wages for the purposes of determining the statute of limitations.

The Donohue Holding

Generally, rounding policies are permitted provided they are

used in a fair and neutral manner and that over time, they do not result in a loss to the employee.

Some employers use rounding practices to streamline the payroll process, while others use them out of habit, without questioning their dwindling benefits or increasing detriments.

In *Donohue v. AMN Servs., LLC*, the Supreme Court was asked to decide the legality of AMN's rounding practice when recording employees' meal breaks.¹⁵

For example, if an employee clocked out for lunch at 11:02 a.m. and clocked back into work at 11:25 a.m., AMN Servs.'s system would record the time punches as 11:00 a.m. and 11:30 a.m.

Although the actual meal period was 23 minutes in length, the system would have recorded the meal period as 30 minutes.¹⁶

Similarly, if an employee clocked in for work at 6:59 a.m. and clocked out for lunch at 12:04 p.m., the system would round the time punch-outs to 7:00 a.m. and 12:00 p.m.

In this case, the actual meal period started after five hours and five minutes of work, but the system would have recorded the meal period as starting after exactly five hours of work.¹⁷

The Supreme Court held AMN's rounding practices violated California's meal break law, as they may effectively result in late and short breaks.

For example:

"An employee...is provided with a 21-minute lunch from 12:04 p.m. to 12:25 p.m. Under AMN's 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...Small rounding errors can amount to a significant infringement on an employee's right to a 30-minute meal period..."¹⁸

In the Supreme Court's view, these allegedly minor discrepancies can unduly burden employees as "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...within a 30-minute timeframe, a few minutes can make a significant difference when it comes to eating an unhurried meal, scheduling a doctor's appointment, giving instructions to a babysitter, refreshing oneself with a cup of coffee, or simply resting before going back to work."¹⁹

AMN argued that the rounding policy was neutral over time because it sometimes paid employees for a few extra minutes they did not work and that, as a whole, the policy slightly overcompensated employees.

The Court rejected this argument because it did not take into account the underpayment of premium pay and thus the policy was not neutral.²⁰

In the second part of the decision, the Supreme Court held that when an employee's time records show a non-compliant meal break, it raises a rebuttable presumption of a meal period violation which imposes upon the employer the burden of proving no violation occurred.

Employers can rebut the presumption by presenting evidence that employees were compensated for noncompliant meal periods or that they had, in fact, been provided compliant meal periods during which they chose to work.²¹

Furthermore, according to the Court, the "rebuttable presumption does not require employers to police meal periods. Instead, it requires employers to give employees a mechanism for recording their meal periods and to ensure that employees use the mechanism properly."²²

The Future of Premium Pay

Does regular rate of compensation have the same meaning as regular rate of pay?

As explained above, the California Labor Code requires the payment of "one additional hour of pay at the employee's regular rate of compensation for each workday that a break was not provided."²³

The parts of the Code that govern overtime requirements state that any overtime work must be compensated at either one and one-half times or double the employee's regular rate of pay for all hours worked.²⁴

In the overtime context, the regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, and reflects, among other things, shift differentials and the per-hour value of any non-hourly compensation the employee earned.²⁵

In 2019, the Court of Appeal in *Ferra v. Loews Hollywood Hotel, LLC*, decided that the term regular rate of compensation, for purposes of premium pay, was not the same as the regular rate of pay for overtime purposes.^{26, 27}

In other words, any premium pay required for break violations should not include adjustments to the normal hourly rate as the regular rate of pay requires.

However, on January 22, 2020, the Supreme Court granted review regarding the meaning of the terms "regular rate of compensation" and "regular rate of pay," and the legislative intent. The matter was fully briefed and as of the writing of this article oral arguments are pending.

Another question arises—Does premium pay give rise to derivative penalties?

Any employer that has faced a wage and hour lawsuit in California knows that minor violations can quickly result in significant liabilities.

For example, any failure to pay minimum wage, overtime, reporting time pay, etc. can lead to waiting time penalties under the rules laid out in the California Labor Code.²⁸

One hotly litigated issue in wage and hour lawsuits is whether the failure to pay a meal or rest period premium gives rise to derivative penalties under the Code for waiting time penalties and for inaccurate wage statements.²⁹

Notably, the Division of Labor Standards Enforcement (DLSE), opined in its Enforcement Manual that failure to pay meal/rest premium pay may result in waiting time penalties.³⁰

In 2019, the Court of Appeal in *Naranjo v. Spectrum Security Services, Inc.* resolved this issue in favor of employers finding that "[Labor Code] section 226.7 actions [for meal and rest break violations] do not entitle employees to pursue the derivative penalties in Sections 203 and 226."^{31, 32}

As anticipated, shortly after the Court of Appeal published its decision Plaintiff filed a petition for review before the Supreme Court, which was granted. The case is fully briefed and, to date, oral arguments have not been set.

Take-Aways

As *Brinker* and *Donohue* clarified, it is important to clearly outline compliant break policies and educate employees about those policies in a variety of ways—for example, periodic email reminders about break policies; review of policies during team meetings or annual evaluations; and annual updates to the employee handbook with a request for a written acknowledgement of receipt.

Such a standard practice can be an essential element in defending meal/rest period claims.

It is also critical to be realistic about work practices and understand that emergencies, tight deadlines, and unforeseen events that can impact employee activity, can happen at any workplace and interfere with timely and/or full breaks.



Any failure to pay minimum wage, overtime, reporting time pay, etc. can lead to waiting time penalties under the rules laid out in the California Labor Code."

When such incidents occur—and they will—employers must pay the premium pay as required under the Labor Code.³³


It is good to remember that paying the premium amount when owed could save a lot of money down the road.

Employers should also periodically audit their work processes.

This could include review of time sheets to see if, for example, employees regularly clock out late for lunch or take short breaks, respond to inquiries regarding proper staffing—is one shift over/under staffed compared to others?—and monitor managerial output expectations.

While periodic internal audits may be time consuming, they are invaluable and shrink into insignificance when compared to the time and resources the employer will need to devote to wage and hour litigation.

Lastly, employee work time should be recorded to the minute.

Based on the *Donohue* decision and a previous 2018 decision, employers must adhere to an accurate time-keeping regimen. This process is a relatively pain-free, as there are various app-based or software-based time keeping programs available that can precisely record an employees' work time.³⁴ 

¹ California Labor Code Section 512 and Section 11 to various IWC Wage Orders.

² California Labor Code Section 512.

³ *Id.*

⁴ *Donohue v. AMN Services, LLC* (2021) LLC, No. S253677, 2021 WL 728871.

⁵ *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004.

⁶ California Labor Code § 512.

⁷ 53 Cal.4th at 1041.

⁸ *Id.* at 1042.

⁹ *Id.* at 1040.

¹⁰ *Id.* at 1038-1039.

¹¹ California Labor Code § 226.7.

¹² *Murphy v. Kenneth Cole Productions, Inc.*, (2007) 40 Cal.4th 1094.

¹³ California Code of Civil Procedure § 340.

¹⁴ *Id.* § 338.

¹⁵ *Donohue v. AMN Servs., LLC*, (2021) No. S253677, 2021 WL 728871.

¹⁶ 2021 WL 728871 at *1.

¹⁷ *Id.*

¹⁸ 2021 WL 728871 at *6.

¹⁹ *Id.*

²⁰ 2021 WL 728871 at *9

²¹ *Id.* at *10.

²² *Id.* at *11.

²³ California Labor Code § 226.7

²⁴ *Id.* § 510.

²⁵ *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.

²⁶ *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal. App. 5th 1239.

²⁷ 40 Cal. App. 5th at 1247.

²⁸ California Labor Code § 203.

²⁹ *Id.* §§ 203 and 226.

³⁰ Division of Labor Standards Enforcement Manual Section 4.3.4.1.

³¹ *Naranjo v. Spectrum Security Services, Inc.* 40 Cal.App.5th 444.

³² 40 Cal.App.5th at 474.

³³ California Labor Code § 226.7.

³⁴ *Troester v. Starbucks Corp.*, 5 Cal. 5th 829.