

Labor Law Release

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California Court Reverses Position on Meal and Rest Period Penalties

As we reported recently in the 2005 Year in Review, legal authorities have unanimously declared that the meal and rest period penalty was in fact a penalty as opposed to a wage. Because the penalty is in fact a penalty, a one year statute of limitations applies rather than a three year statute of limitations for unpaid wages. (*Hartwig v. Orchard Commercial, Inc.* (2005) (DLSC May 11, 2005 No. 12-56901RB; *Murphy v. Kenneth Cole Productions, Inc.* (2005) 134 Cal Ap 4th 728.)

On January 20th, another California Court of Appeal issued a ruling holding that the missed meal and rest penalty is not only a penalty, but also a wage and therefore is subject to the three year statute of limitations under Code of Civil Procedure Section 338. (*National Steel And Ship Building Co. v. Superior Court (Godinez)* 2006 CAL. APP. LEXIE 48)

The Godinez court concluded that the penalty is indeed a penalty because it does not apply if the employee voluntarily foregoes a meal or rest period. Moreover, payment is not related to the amount of time worked by an employee since (s)he receives one full hour of pay for a missed 10 minute rest period. However, the court also concluded the penalty is a wage because it is made directly to the employee and it is labeled as an additional hour of "pay" by statute.

The court disregarded the DLSC precedents decision (*Hartwig*) in the Kenneth Cole Productions case. It instead looked at legislative history which it concluded was not sufficient to determine whether this penalty was indeed a penalty or a wage. Therefore the court decided to "harmonize" the statutory scheme. The court concluded that because the level of penalty may be imposed by the DLSC for missed meal or rest periods, then the missed meal and rest period could not be a second penalty. The court also

concluded it was important that the protection of employees is paramount. Moreover, the court concluded there would be no harm to the employer since an employer must maintain records for at least three years. (Obviously the court does not understand that an employer is not required to maintain records for rest periods

from forcing employees to work during their meal or rest periods.

It is also interesting to note that the court concluded that the failure to pay the penalty may be the basis for an unfair competition law which gives rise to a four year statute of limitations. The court did not, however, opine further on this issue.

Giving the conflicting authorities in California, what should an employer do? There are several things an employer should do to protect itself against a claim of unpaid meal or rest period penalties.

First, the employer should maintain appropriate time records including time in and out each day and the beginning and end of each meal period. The timecard turned in by the employees should also include language verifying that the employee has taken all appropriate rest and meal periods.

Second, an employer should implement the changes we recommended at the Year in Review with respect to meal and rest periods. These modifications to the handbook encourage employees to take appropriate rest and meal periods.

Third, you should consider implementing an internal grievance process requiring an

employee to first come to you with a complaint prior to filing a legal action.

Finally, you should review your document retention policy. While the law requires an employer to retain these for three years, it does not mandate that the employer maintain the records for any longer period of time. In the event a missed meal or rest period could be subject to a four year statute of limitations under the Unfair Competition Law, maintaining records for longer than is required may subject you to additional liability.

This is not intended as a complete analysis of the subject matter, or legal advice on any specific matter. Contact us if you have specific questions or need further assistance.