Gimme A Break! Court Says CBA Can Block Meal-And-Rest-Period Lawsuit

Insights
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As most employers in California know, meal and rest period litigation has been a hot area for more than a decade, troubling employers across all industries. This is largely because state law provides extremely rigid requirements for meal and rest periods—and extremely large financial damages for failure to comply. However, for those California employers with a unionized workforce, there could be a welcome reprieve available that you might not know about.

That's because in some industries, an existing exemption in a collective bargaining agreement (CBA) might provide relief from meal and rest period litigation. In fact, a federal court recently held that this exemption precluded claims of missed meal and rest periods against a construction and engineering company. If your workforce is partially or fully unionized, continue reading to find out how you might
capitalize on this decision.

Just The Facts
At the outset, we need to caution you to continue reading even if you are already familiar with this case (and advise you that you are *not* suffering from déjà vu). Although we reported on this same set of facts in the January 2018 edition of our newsletter, we focused on the October 2017 decision relating to the status of class certification.
Several months after that decision, the same case also produced a helpful result in the area of wage and hour law, which is what we'll look at now.

Peter Zayerz was an hourly journeyman laborer for Kiewit Infrastructure West Co., a construction and engineering firm specializing in public works projects throughout California. He was employed with the company for approximately four months in 2015, working on several projects in Newport Beach and Huntington Beach. Zayerz alleged that during his short stint at Kiewit, the company committed a variety of wage and hour violations.

For example, despite the company's written policy promising a second meal period to employees who worked more than 10 hours in a given shift in compliance with state law, Zayerz alleged that, as a practical matter, supervisors wouldn't allow a second meal period. Similarly, he claimed that Kiewet did not provide a third rest period to employees who worked shifts in excess of 10 hours. Moreover, with respect to both missed meals and breaks, Zayerz further alleged that he and others were not consistently paid a "wage premium"—which should consist of one hour's pay at the

regular rate—when such meal and rest periods were denied. And when Kiewit did pay the wage premium for missed meals and rest breaks, Zayerz alleged the company mislabeled those wages on pay stubs as "double time" in violation of California's strict standards.

Zayerz filed suit against the company and sought class status on behalf of all others similarly situated. As we reported in our January 2018 edition, the court denied Zayerz's class action certification, finding that he had failed to prove that common legal and factual issues predominate over individual ones.

Initially, the court allowed Zayerz's individual meal and rest period (and related) claims to move forward. However, in a somewhat rare move, the court reconsidered and reversed its earlier decision, concluding that the plaintiff's meal and rest break claims were exempted by a valid collective bargaining agreement (CBA). As it noted humbly in a January 2018 order, "the court concedes that it failed to consider a material issue of law in its prior order, namely that the governing CBA exempts defendant from liability under the labor code for the meal and rest period claims."

CBA Exemption Precludes Meal Period Claims

The court was swayed by Labor Code Section 512(e), which provides an exemption to the meal period requirements of state law if the employee is covered by a valid collective bargaining agreement that includes very specific provisions. It must stipulate to the wages, hours of work, and working conditions of employees, and expressly provide for meal periods for those employees, final and binding arbitration of disputes concerning meal periods, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent over the state minimum wage.

In this case, the CBA contained a specific provision on meal periods:

Lunch periods shall be scheduled not later than five (5) hours after the start of work. An employee required to work during his lunch period shall receive time and one-half of his regular rate for such time. The employee must be allowed to eat his lunch as soon as possible. An earlier starting time or deviation of the scheduled meal period time may be arranged by approval of a majority of the employees on the job in a poll conducted by the steward, provided that no work is started prior to 2:00 a.m. without agreement of the Union….

The court held that the CBA language met the state law requirements because it expressly provided for "wages, hours of work, and working conditions." It noted that other portions of the CBA addressed a variety of factors necessary to sustain proper working conditions that permitted the exemption, such as the mandatory provision of water to site workers, protective equipment and sanitary toilets at jobsites, and insurance coverage for injured workers. Most importantly, the language "expressly provided for meal periods." The court concluded that the CBA satisfied the exemption language contained in Section 512(e), and therefore ruled in favor of the company.

However, this collective bargaining exemption is not generally available to employers in all industries. It applies only if you have employees in a construction occupation or certain specified utilities, or if you employ commercial drivers or security officers. Other provisions of state law establish different CBA exemptions for employee meal periods, so there may be hope if you employ workers in the wholesale baking, motion picture, or broadcasting industries, or public transit bus drivers.

Similar Fate For Rest Period Claims

The court similarly held that Zayerz's rest period claims were exempt by operation of the CBA. Industrial Welfare Commission Wage Order 16, which covers construction and similar occupations, similarly contains a CBA exemption for rest periods. The Wage Order language states that the rest period provisions do not apply to "any employee covered by a valid collective bargaining agreement if the collective bargaining agreement provides equivalent protection." It further states that, in cases where a CBA provides a final and binding mechanism for resolving disputes regarding enforcement of the rest period provisions, the CBA will prevail.

In this case, the CBA stated:

The parties to this Agreement recognize and understand that it would be inconsistent with the industry custom and practice to prohibit individuals, under normal working conditions, during the first half of the shift, a fifteen (15) minute unorganized *break at his or her assigned work area. If an employee is scheduled to work ten (10) or more hours in any given day, he will be given a second fifteen (15) minute, unorganized break at the place of work during the second half of the shift between the sixth and ninth hour.*

The court concluded this language met the requirements of the exemption for rest periods. Here, the break provided by the CBA is five minutes longer than the 10-minute break provided under the Labor Code.

In addition, the CBA requires that any disputes or grievances shall be processed in accordance with the grievance and arbitration provisions of the contract. Therefore, since Zayerz was covered by a valid collective bargaining agreement that offered "equivalent protection" as that found in Wage Order 16, the court concluded his rest period claims were thereby exempt. Moreover, because the meal and rest period claims were exempted by the CBA, the court similarly dismissed the plaintiff's other "derivative" claims for paystub violations and PAGA claims since the underlying claims were precluded by the CBA.

Lesson: Your CBA Can Provide Relief, But Only If Properly Written

The important lesson here is that having a CBA does not automatically insulate you from liability for state law meal and rest period claims. As they say, the devil is in the details. This case underscores that for an employer in a covered industry to take advantage of the exemption for meal periods, the CBA must "expressly provide" for wages, hours, and working conditions, as well as "expressly provide" for meal

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periods and rest periods, and rest periods must provide "equivalent protection" as state law. A CBA that is vague or silent on these issues is not going to cut it; your contract must clearly detail these issues.

But as this case illustrates, a well-written CBA can afford relief from state law claims over these vexatious issues. Overall, this case creates good public policy. You should not be liable under state law if you have agreed in good faith to different terms with the union, when the terms offer similar (if not more generous) protections. Even most labor unions would agree that the contract should prevail if the parties negotiated terms that appear in a CBA.

While nonunion employers in California might desire similar flexibility regarding meal and rest period issues, this leeway is currently extended only to unionized employers in specific industries. But employers that fit within these union parameters should work with labor counsel and pay close attention to your contract language (both existing and language proposed during negotiations) to benefit from this potential exemption.

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