Recent Meal Period Cases Require Employers To Review Their Current Practices

Insights
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The year 2019 brought a number of adjustments in the legal landscape for California employers – and meal periods were no exception. California appellate courts buckled down on the interpretation of statutory language in two areas: (1) on-duty meal period agreements; and (2) the method for calculating premium pay for failing to provide a compliant meal period. The courts recently applied strict interpretations to statutory language governing both the requirements for on-duty meal period agreements, as well as calculating the hour of pay at the "regular rate of compensation" for premiums paid when eligible employees are not provided with a compliant off-duty meal or rest period.

On-Duty Meal Period Agreements Must Be Specific...Or Else

On-duty meal periods are permitted by agreement under very specific circumstances. If the conditions are met, you are only obligated to pay the employee for the time worked, including the time worked "on duty" by the employee for the meal period. Otherwise, you must pay a "premium" in the amount of "one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." The mere fact that premium is paid does not excuse you from penalties under the Private Attorneys General Act (PAGA).

In *Naranjo v. Spectrum Security Services, Inc.,* California's appellate court examined an on-duty meal period agreement in place at Spectrum Security Services. On-duty meal period agreements are addressed only in the Industrial Welfare Commission Wage Orders and are permissible only under very specific circumstances. When effective, they permit employers to require employees to stay "on duty" during their meal period. However, this is a very narrow exception to the requirement to provide premium pay whenever an employee is not provided with a duty-free compliant meal period. If the requirements for an on-duty meal period are not strictly met, it can be very costly, as Spectrum discovered to the tune of about $1.4 million dollars.

Spectrum contracts with federal agencies to take temporary custody of federal prisoners and ICE detainees for appointments requiring supervision outside of their custodial location as well as witnesses awaiting court appearances. Two officers were assigned to each charge and were only permitted to leave their charge for restroom breaks. The officers were required to take "on-duty" meal periods, which included being on-call and within radio range if they had coordinated with other officers to allow them to leave to obtain food nearby.

As part of their employment, Spectrum officers acknowledged receipt and examination of operation manuals which outlined the requirement that meal periods were "on duty" and that officers were only permitted to leave their charge for short restroom breaks. Spectrum claimed that the officers understood and agreed to the on-duty meal periods, and knew they could revoke the agreement by declining the on-call assignment, asking for another shift, asking for other accommodations, or quitting. However, the policies at issue did not state in writing that employees could, in fact, revoke the on-duty meal period agreements at any time.

The relevant Wage Order requires a written agreement which "shall state that the employee may, in writing, revoke the agreement at any time." Spectrum argued that substantial compliance with the Wage Order is sufficient, and thus, because officers knew they could revoke the agreement, it had a compliant on-duty meal period agreement despite the lack of the written revocation clause.

The court found there was no applicable legal support for Spectrum's position that substantial compliance with the Wage Order's on-duty meal period agreements was sufficient. Instead, it reemphasized that the exception for on-duty meal periods is "exceedingly narrow" and that permitting substantial compliance instead of strict compliance with the Wage Order would "shatter" the narrow on-duty meal period exception.

As a result, the appellate court held that the Wage Order language requires a written agreement which expressly includes language advising "the employee may, in writing, revoke the agreement at any time." In so doing, it affirmed a judgment against Spectrum in the amount of nearly $1.4 million dollars.

The Strict Interpretation Of Premium Pay Language Benefits Employers

In another case from the past year, the California Court of Appeal separately considered how to calculate the hour of premium pay owed when employers fail to provide a compliant meal or rest period.

The plaintiff in *Ferra v. Loews Hollywood Hotel, LLC* argued that the meal and rest period premiums were paid improperly because the rate of premium pay was at the employee's base rate (hourly wage) and did not take into account non-discretionary bonuses or similar compensation. The plaintiff further contended that the phrase "regular rate of compensation" should be calculated the same as the "regular rate of pay" used for calculating overtime compensation.

The court first examined the statutory language and concluded that because the legislature used "of compensation" with premium pay and "of pay" with overtime pay, it must have intended for there to be a distinction between the two. The court also examined the legislative history which does not define the terms. Finally, the court examined federal authority – which is split on the issue – with some courts holding that the overtime calculations are correct, and others finding the base wage to be sufficient.

Ultimately, the appellate court held that you are obligated to provide a full extra hour of pay only at the employee's base hourly rate. It concluded that you are not required to include additional types of compensation in the calculation.

Conclusion

In light of the *Naranjo* case, if you have or are considering the implementation of an on-duty meal period agreement, it is important to make sure you are fully complying with the outlined requirements. If an on-duty meal period is not compliant, you must pay the one-hour premium. However, you should also keep in mind that payment of the one-hour premium does not relieve you from other penalties for failure to provide an employee with the mandated meal (or rest) period.

If you have not recently examined your on-duty meal period agreements, we recommend having an attorney review them to ensure compliance with the most recent decisions on the law. You also may be able to take advantage of meal period waivers that may apply to employees working no more than six hours (first meal period waiver) or 12 hours (second meal period waiver) in a day. Generally, no more than one meal period can be waived each day. Such waivers generally do not have a strict writing requirement (although a written agreement for any waiver is generally recommended).

If you do not have an on-duty meal period agreement in place, the *Ferra* case also provides some guidance on calculating the meal-period premiums that must be paid when an employee is required to work through a meal (or rest) period and whether to pay the premium at the employee's base rate. Indeed, federal authority is split on this issue, and recent non-binding federal authority interpreting California law has required incentive pay to be included in these calculations.

In short, the issue may be revisited, in which case the California Supreme Court, the Industrial Welfare Commission, or the state legislature may have the last word. If an appellate court decision interprets existing law, that decision generally applies retroactively. By contrast, if the IWC or the legislature amends or passes a new statute, that ruling generally will only have prospective effect. Thus, we recommend discussing the pros and cons of following the *Ferra* decision with your attorney.

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