Recent California Supreme Court Case Offers Meal Period Guidance

Insights
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The California Supreme Court recently ruled that acknowledgments may be evidence used by employers to refute meal period claims, but employers cannot obtain acknowledgments using "rounded" time punches when confronting employees with timecard deviations for meal periods. The Court's February 25 decision in *Donohue v. AMN Services, LLC* further held that time records showing noncompliant meal periods do raise a rebuttable presumption of meal period violations, which then shifts the burden to employers to rebut such presumptions with contrary evidence, which may include but is not limited to witness statements and objectively reliable employee acknowledgments.

While at first glance the opinion may appear to be bad news for California employers, it actually affirms that employers may use acknowledgments by employees detailing whether or not properly identified deviations in the time records were the result of their personal choices rather than deviations caused by the employer, the latter requiring the employer to pay the adversely affected employees the one-hour premium required by Labor Code section 226.7. If employees concede in their acknowledgments, however, that the deviation was the result of their personal choice, a one-hour premium will not be due because the employer bears no fault. The decision also leaves intact the distinction between rounding for purposes of determining "hours worked," which has been upheld by state and federal courts provided certain conditions are established, as opposed to rounding used in recording the mandatory 30-minute meal period requirement, now expressly prohibited by the Supreme Court. In short, the Court provides valuable insight as to how employers can comply with the law and effectively rebut any presumption of meal period violations in their time records.

California Law On Meal Breaks

California employers should be readily familiar with the basic requirement that employers must generally provide employees with one 30-minute meal period that begins no later than the end of the fifth hour of work and another 30-minute meal period that begins no later than the end of the tenth hour of work. With some limited exceptions, if an employer does not provide an employee with a compliant meal period, then they must pay the employee one additional hour of pay at the employee's regular rate of pay for each workday the meal period was not provided.

The seminal case on what it means to "provide" a meal break is the 2012 decision in *Brinker Restaurant Corp. v. Superior Court*. In that case, the court provided a clear standard regarding the duty to provide a meal period, noting that an employer satisfies this obligation if it 1) relieves its employees of all duty; 2) relinquishes control over their activities; 3) permits them a reasonable opportunity to take an uninterrupted 30-minute break; and 4) does not impede or discourage them from doing so. Of course, the devil is in the details – as last week's decision makes clear.

Facts Of The Case

Kennedy Donohue worked as a nurse recruiter for AMN Services, LLC, a healthcare staffing company, typically working eight hours per day. AMN used an electronic timekeeping system to track compensable time. The system rounded time punches to the nearest 10-minute increment. For example, if an employee clocked out for lunch at 11:02 a.m. and clocked in after lunch at 11:25 a.m., the system would record punches as 11:00 a.m. and 11:30 a.m. By rounding, this would record a compliant meal period when in reality, the actual time provided was less than the full 30 minutes.

Prior to September 2012, whenever the timekeeping system showed a missed meal period, a meal period shorter than 30 minutes, or a meal period taken after five hours of work, AMN assumed that there was a meal period violation and paid the one-hour meal period premium.

In September 2012, AMN added a feature to comply with the meal period requirements articulated in *Brinker*: When an employee recorded a missed, short, or late meal period, a dropdown menu would appear, prompting the employee to choose one of three options:

1. "I was provided an opportunity to take a 30 min break before the end of my 5th hour of work but chose not to";
2. "I was provided an opportunity to take a 30 min break before the end of my 5th hour of work but chose to take a shorter/later break";
3. "I was not provided an opportunity to take a 30 min break before the end of my 5th hour of work."

If the employee acknowledged choosing the first or second option, AMN assumed the employee was provided with a compliant meal period but voluntarily chose not to take one and thus no premium was paid. If the employee chose the third option, AMN assumed there was a meal period violation and paid the one-hour premium. This may have been just fine in negating a violation had the employee been presented with an accurate record of deviations.

In addition, at the end of each biweekly pay period, employees were required to sign another acknowledgment, a certification that stated, in pertinent part: "By submitting this timesheet, I am certifying that I have reviewed the time entries I made and confirm they are true and accurate. I am also confirming that . . . I was provided the opportunity to take all meal breaks to which I was entitled, or, if not, I have reported on this timesheet that I was not provided the opportunity to take all such meal breaks . . . ." Again, had the employee been presented with an accurate record of

deviations, this further statement may have provided reliable defense evidence showing compliance by the employer in selected situations notwithstanding the deviations in the time record.

AMN relied upon the rounded time punches generated by its timekeeping system to determine whether a meal period was short or delayed. Accordingly, in the above example, before September 2012, AMN would not have paid a meal-period premium because the timekeeping system would have recorded a full 30-minute (or otherwise timely) meal period. Similarly, after September 2012, the dropdown menu would not have been triggered because the timekeeping system would record a compliant meal period and the employee would not be prompted to indicate whether there had been a meal-period violation.

In April 2014, Donohue filed a class action lawsuit against AMN alleging various wage and hour violations, including the meal period claim at issue. After certifying a class of nurse recruiters, Donohue filed a motion for summary adjudication, arguing AMN denied its employees compliant meal periods, improperly rounded time records for meal periods, and failed to pay premium wages for noncompliant meal periods.

In support of her motion, Donohue submitted her testimony that AMN's office culture discouraged employees from taking full and timely lunches. The amount of missed meal period deviations caused by the timekeeping system rounding was significant. Donohue submitted a declaration from a statistics professor stating the timekeeping system used by AMN resulted in the denial of premium wages for 40,110 short lunches and 6,651 late lunches. The expert calculated these figures by comparing the rounded time punches with the original, non-rounded time records.

AMN filed a cross-motion for summary judgment/adjudication arguing it did not have a uniform policy or practice of denying employees compliant meal periods. AMN submitted declarations of 40 class members stating they either "always," "usually," or "sometimes" took lunches that were at least 30 minutes long and no declarant stated a supervisor discouraged them from taking a full or timely meal period. AMN also provided an expert declaration which opined that over time, the rounding of meal period punches resulted in overcompensation of the class by 85 work hours and the average length of meal periods recorded was 45.6 minutes.

Both the trial court and the Court of Appeal ruled in favor of AMN, finding that the company's rounding policy fairly compensated employees over time and that there was insufficient evidence that supervisors prevented employees from taking compliant meal periods. The Court of Appeal also rejected the argument that time records showing missing, short, or delayed meal periods gave rise to a rebuttable presumption of meal period violations.

The Holding: No Rounding Of Meal Period Time Punches And The Rebuttable Presumption

The California Supreme Court first held that rounding time punches for meal periods is inconsistent with the purpose of the Labor Code provisions and California Wage Orders governing meal periods.

Although the law was not expressly settled on this point, the Supreme Court's ruling draws a bright line for recording actual time for meal periods, which must be no less than 30 actual minutes.

The second major holding of the opinion was that time card deviations may create a rebuttable presumption that must be rebutted by the employer. This holding had roots in the concurring opinion in *Brinker*, which stated "if an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided." The burden is on the employer to show that a meal period was taken or that the employee knowingly and voluntarily decided not to take a meal period which otherwise was provided or made available. In expanding the law, the Court found persuasive that various Courts of Appeal had cited the *Brinker* concurrence approvingly and adopted it as the Court's ruling.

Key Takeaways From Court's Ruling

The value in the Court's decision lies in the cues it provides as to how that presumption can be rebutted.

Rule Offers Clarity Regarding Timeliness

First, the bright-line rule that meal period time punches cannot be rounded is not only useful in determining whether a full 30-minute meal period was taken, but also in determining whether the meal period was timely taken before the completion of the fifth hour of work. If rounding occurs at the beginning of the shift, for example, the ending of five hours could be delayed by such rounding and similarly not show a deviation on the time record (another situation flagged by the plaintiff in this case).

Although rounding has been approved by state and federal courts for purposes of recording "hours worked" as long as certain conditions are satisfied (a line of precedent the Court opted not to disturb), this decision creates a distinction for meal period time that will press employers to adopt a timekeeping system that records universally (and subsequently pays) to-the-minute time punches for all hours worked, generally four different time entries for an eight-hour day: (1) the beginning of the day, (2) the beginning of the meal period, (3) the end of the meal period, and (4) the end of the day. Not surprisingly, that's exactly what AMN did after the lawsuit was filed. Accordingly, there is a road map for employers to comply with the holding of the case – by adopting a timekeeping system that tracks, and subsequently pays, for all hours worked, the exact hours worked down to actual minutes.

On the other hand, if an employer wishes to continue with a rounding system for the first punch in for the day and when clocking out for the day, employers must be careful when auditing time records for compliance with the meal period rules. For example, if an employee clocked in at 6:55 a.m., and that time punch is rounded up to 7:00 a.m., and the employee clocked out for their meal period at noon, technically the meal period would not be timely as it would be taken after completion of the fifth hour of work.

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Another issue arises with employers who do not use an electronic timekeeping system and instead use handwritten timesheets. Employees will need to record the exact time which they began and stopped work in order to have accurate time records in accordance with the *Donohue* decision. But employers should go further than simply instructing and training employees to record the exact hours worked – it would be wise to question time records that show rounded entries, i.e., time entries exactly on the hour, half hour, or quarter hour (especially common with handwritten entries).

Affirmative Defense Available

Second, as to the Court's holding regarding a rebuttable presumption of a meal period violation, if employers keep accurate time records, tracked to the minute, and comply with the law by providing meal periods, they would not be impacted negatively by this presumption (but helped considerably to the contrary). But if the time records are inaccurate, resulting in the adverse presumption, then employers still can "plead and prove, as an affirmative defense, that it genuinely relieved employees from duty during meal periods."

As an illustration, the Court went on to explain that employers can present evidence that employees (1) were paid the required premiums for noncompliant meal periods or (2) that they were not paid such premiums because they had in fact been provided compliant meal periods during which they chose to work. There are several ways employers can make this showing, such as through employee statements, testimony, surveys, statistical analysis, or other analytical tools which may ultimately result in a victory at the summary judgment stage. Many employers currently also use acknowledgment forms weekly or each pay period which employees complete and affirm that their time records are accurate and that they were provided with all applicable breaks during the applicable period, or the contrary (which could trigger premiums demonstrable remedial action by the employer). Critically, the Court confirmed the considerable evidentiary weight of acknowledgments as a factor in determining whether premiums are warranted when timecard deviations occur, as long as the timekeeping system is accurate.

Thus, although this decision turned on the issue of accurate timekeeping, the traditional processes and tools available to employers to prove compliance remain available – making the *Donohue* case a helpful guide. Indeed, the Supreme Court remanded this case to the trial court so that the employer would be able to assert defenses it otherwise was entitled to.

Conclusion

The Supreme Court's decision suggests that its ruling would have been different if the rounding had not been used for creating the time record which was used in recording meal periods. Had actual time been recorded, an accurate record of deviations could have been presented to employees, who then could have provided answers to a complete, not partial, record of deviations (skipped, short, or late). With a complete record, together with other evidence, the employer can reliably determine whether the employees with the deficient time entries were entitled to the one hour premium or not.

whether the employees with the deficient time entries were entitled to the one-hour premium or not. Predictably, for employers who vigilantly and effectively enforce their legally compliant polices, the payment of premiums to employees should be rare.

It follows that, if employers remove these types of rounding systems, it puts them in a better position to prove compliance with the California meal period laws. Indeed, this is something all California employers can readily accomplish because employees are fully capable of recording their actual time worked, and supervisors can be tasked with ensuring compliance. Further, the decision reaffirms that tools, such as acknowledgements, will have considerable weight in the case of litigation or mediation.

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