# California Supreme Court Says Payments for Missed Breaks are "Wages": A 3-Step Action Plan for Employers

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The California Supreme Court ruled yesterday that any premiums paid to employees who are unable to take a full and timely meal or rest period should be considered "wages," which not only triggers two key obligations on the part of California employers but also reemphasizes the importance of meal and rest break compliance. The May 23 decision in *Naranjo v. Spectrum Security Services, Inc.* means that any premiums you pay in this regard must be (1) reported on statutorily required wage statements during employment and (2) paid within the statutory deadlines when an employee separates employment. This Insight provides you with a summary of what happened and provides a three-step action plan for employers moving forward.

**Meal and Break Premiums: Penalty or Wage?**

As most California employers and HR professionals know, and as we have explained in previous Fisher Phillips Insights, there are requirements pertaining to meal and rest periods which can be highly technical. Indeed, California law dictates when breaks should start, how much control the company can exercise over break conditions, and generally, how long they should last.

By now, most employers are also aware that when an employer fails to provide a legally compliant meal period or rest break, Labor Code section 226.7(c) imposes an obligation for the employer to pay the employee one additional hour of pay at the regular rate of compensation. A key unresolved issue was whether this additional hour, or premium, is a "wage" or a "penalty." Up until yesterday, this was generally understood to be a penalty rather than a wage.

This distinction is important because – as noted above – "wages" come with additional potential damages and compliance requirements. Unfortunately, the California Supreme Court went in a different direction and stated unequivocally that meal and rest period premiums are wages.

**Terminated Employee Sought to Plow New Ground for California Plaintiffs**

The case started over a decade ago when Gustavo Naranjo was employed by Spectrum as a guard. The company suspended and ultimately fired Naranjo after it alleged he left his post to take a meal break in violation of Spectrum's policy that required him and similar employees to remain on duty during all meal breaks.

Naranjo filed a putative class action on behalf of Spectrum employees alleging the company violated state meal break requirements. He sought an additional hour of pay commonly referred to as "premium pay" for meal breaks not provided. Naranjo alleged two additional Labor Code violations related to the premium pay: he argued that Spectrum was required to report the premium pay on employees' wage statements and provide all premium pay to employees upon their discharge or resignation.

The trial court determined that premium pay obligations were required to be included on wage statements and as part of final pay obligations, but the resulting wage statement or final pay penalties nonetheless required findings of "knowing and intentional" (as to wage statements) or "willful" (as to final pay) violations.

The trial court entered a judgment in favor of Naranjo and the class he represented on the meal break and wage statement claims. But because the final pay claims were not deemed "willful," it only awarded him attorneys' fees and prejudgment interest at 10%.

The Court of Appeal agreed that Spectrum violated the meal break laws but held a failure to pay meal break premiums could not support claims for wage statement and final pay violations. The Court of Appeal also reduced the prejudgment interest rate to 7%.

**Do Meal and Rest Break Premiums Give Rise to Waiting Time Penalties? The Court Affirmatively Says Yes**

The California Supreme Court reviewed the Appellate Court's findings and first addressed whether meal and rest premiums give rise to a claim for penalties for failure to pay all wages upon separation, also referred to as "waiting time penalties" under Labor Code section 203. The court rejected the Court of Appeal's finding that meal and rest premiums were a legal remedy, not payment for labor and thus, not wages. Instead, it determined that premiums are *both* a legal remedy for a violation of law *and* wages because of the nature of the underlying violation.

The court likened meal and rest break premiums to other familiar forms of wages such as overtime premiums, reporting time pay when an employee is not provided at least half of their scheduled work, or split-shift premiums. The court reasoned that although missed-break premiums differ from these types of pay in that they aim to remedy a past violation, the premium pay nonetheless compensated for labor performed under conditions of hardship which should control whether premiums are, in fact, wages.

**No Surprise, the Court Also Determined Break Premiums Are Required to be Reported on Wage Statements**

The court then turned to the second major question of the case: whether the same break premiums are "wages" for purposes of Labor Code section 226 governing wage statements. Once again, it answered that question with a resounding "yes."

**A Potential Silver Lining: Traditional Defenses to Wage Statement and Waiting Time Penalties Remain Intact and More Important than Ever**

While the court's decision is disappointing, there is some good news. The court made a point to state that in overturning the Court of Appeal decision which held that missed break premiums could *never* support claims for wage statement and waiting time penalties, it was *not* saying that missed break premiums would *always* trigger wage statement and waiting time penalties. In order to obtain penalties under Labor Code sections 226 and 203, employees must still prove that the relevant conditions for imposing penalties are met.

First, this means that **employees must establish an actual violation of the meal and rest break rules** to be eligible for an applicable premium. Second, even if a premium is owed, **an employee must still establish that a failure to report premiums on wage statements is knowing and intentional and that a failure to pay all premiums out upon termination is willful**.

By way of example, if an employee working an ordinary shift recorded a proper meal break in the employer's system but went back to work before a full 30 minutes voluntarily without telling anyone or corrected their time records, a failure to report a premium on a wage statement might not be knowing or willful.

**What Should You Do? An Employer's 3-Step Plan**

Now, more than ever, consistent and dedicated compliance with California's meal and rest break rules is critical. Here are the three steps you should take to ensure compliance with the new standard.

1. ***Vigilantly Comply with Meal and Break Rules***
   First and foremost, this decision again highlights the importance of forming and maintaining compliant meal, rest, and recovery period policies. Equally important: you need to demonstrate constant vigilance in complying with the relevant laws and regulations, including the calculation of the one-hour premium required when violations occur.
2. ***Adjust Your Practices***
   You should now speak to your attorneys and payroll processors regarding how to reformat paystubs to make sure premiums are reported to comply with the requirements set forth in this case. Further, you should ensure that you contemplate any such premiums that need to be paid as wages when calculating and paying out final pay. Make sure your managers and payroll department are now aware of this new interpretation.
3. ***Determine What to Do About Problems in Your Past***
   Finally, you may now realize that you failed to apply the new interpretation laid out by the California Supreme Court in the past. If yesterday's case is determined to be retroactive in nature, those actions may come back to haunt you unless you take action. But before running off to make additional payments in an attempt to fix things, you should coordinate with your

California wage and hour attorney to determine the best approach in your specific situation. You will want to take into account any unique circumstances involved at your workplace before developing a plan of action.

We will continue to monitor developments in this area and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. For more information, contact your Fisher Phillips attorney, the authors of this Insight, or any of the attorneys in our California offices.

## *Related People*

**Ashton M. Riley**
Partner
949.798.2186
Email

**Boris Sorsher**
Partner
949.851.2424
Email

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