



California Supreme Court Provides A Dose Of Helpful Medicine For Healthcare Employers

Insights

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In an important decision for employers in the healthcare industry, the California Supreme Court just approved the Industrial Welfare Commission's long-standing exemption for health care workers in relation to second meal period waivers. The *Gerard v. Orange Coast Memorial Medical Center* case, released earlier today, had already been the subject of another decision from the California Supreme Court, and the California legislature even passed legislation in the middle of the case directly affecting the court's decisions—which means this decision was a long timing coming for the California healthcare community.

The plaintiffs' primary complaint was that their former employer illegally allowed its healthcare employees to waive their rights to a second meal period on shifts longer than 12 hours. Today's decision finally rejects that contention once and for all, affirming that healthcare workers in California may waive their rights to second meal periods.

Background: The California Wage Orders And The Apparent Conflict With The California Labor Code

There are three main sources of law at issue in the case: Labor Code sections 512 and 516—which prescribe the rules for meal periods in California—and California's Wage Order 5.

- Adopted by the California legislature in 1999 and effective January 1, 2000, section 512 states that employers must provide a second meal period of not less than 30 minutes when an employee works for more than 10 hours per day, but this second meal period may be waived by mutual consent of the employer and employee—*except* when the employee works more than 12 hours.
- Section 516 provides that the Industrial Welfare Commission (IWC) may adopt or amend working condition orders with respect to, among other topics, meal periods, “consistent with the health and welfare of those workers.”
- Wage Order 5 was adopted by the IWC in June 2000 and became effective October 1, 2000. At the time it was adopted, section 516 was already in effect. Section 11(D) of Wage Order 5 provides that “notwithstanding any other provision of this order, *employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods.*”

After section 11(D) was adopted, but before it became effective, section 516 was amended to say “except as provided in Section 512, the IWC may adopt or amend working condition orders with respect to . . . meal periods” Therein lies the potential conflict: section 512 states that employees cannot waive a second meal period for shifts over 12 hours, while Wage Order 5 does not contain such a restriction. The court in *Gerard* was tasked with resolving this issue.

The *Gerard* Case

The plaintiffs are a group of healthcare workers who were formerly employed by Orange Coast Memorial Medical Center. The plaintiffs alleged that they usually worked 12-hour shifts, and sometimes even longer. The hospital had a policy for healthcare workers who worked shifts longer than 10 hours caring for patients to voluntarily waive one of their two meal periods, even if their shifts lasted more than 12 hours.

The plaintiffs alleged they signed meal period waivers, but the policy was in violation of the IWC Wage Orders and Labor Code sections 226.7 and 512. The trial court sided with the hospital, finding the plaintiffs were “provided meal periods as required by law.” The plaintiffs then appealed, arguing that the meal period waivers were in violation of the law.

The Case Makes Two Trips To The California Supreme Court

Today’s decision was the second time the parties were before the California Supreme Court. In the first round (*Gerard I*), the Court of Appeal held that that section 11(D) of Wage Order 5 was invalid to the extent it sanctioned second meal period waivers for healthcare employees who work shifts of more than 12 hours, siding with the plaintiffs. In 2015, while the case was on appeal to the California Supreme Court, the California legislature enacted Senate Bill 327, which amended section 516 to add the following carve-out: “notwithstanding . . . any other law, *including Section 512, the health care employee meal period waiver provisions* in Section 11(D) of IWC Wage Orders 4 and 5 were valid and enforceable on and after October 1, 2000 *and continue to be valid and enforceable*. This subdivision is declarative of, and clarifies, existing law.” The Supreme Court in *Gerard I* ordered the Court of Appeal to vacate its initial order and reconsider its decision in the light of SB 327.

On remand, the Court of Appeal recognized “it appears [it] erred in *Gerard I*,” and reversed course to side with the hospital. Its error was that the Court of Appeal failed to recognize that there is a critical distinction in administrative law: the date an agency regulation is adopted is not the same as the date it becomes effective. Here, section 11(D) was adopted before the amendment to section 516 was amended to take away the IWC’s authority to adopt wage orders inconsistent with the second meal period requirements of section 512. Section 11(D) was adopted June 30, 2000, while section 516 was amended as of September 19, 2000.

Take Two: The Supreme Court Provides Certainty In *Gerard II*

While at first it appears that this case is a simple one—as the California legislature has spoken and healthcare workers should be allowed to waive their rights to a second meal period—there was an apparent conflict of the law that had far-reaching policy implications. The plaintiffs made several

arguments to sway the court to resolve the conflict in their favor, but each of which was found unpersuasive by the Supreme Court.

The court first harmonized the timeline illustrated above, finding that the amendment to Labor Code section 516 came *after* the IWC enacted section 11(D); therefore, section 11(D) survived section 516's limitation on IWC authority and, ultimately, the two could interact simultaneously without conflict. The court then turned to its larger task—addressing the legislative and administrative history of the provisions at issue.

The court determined Labor Code section 516 was not a clarification of the IWC's lack of authority, but a clear change in the law. Before section 516's amendment, the IWC could adopt provisions affecting the meal period requirements of section 512, and after, it could no longer. But by the time of section 516's adoption, the IWC had already adopted section 11(D). Thus, section 516 was not retroactively changing the IWC's authority for past actions—merely addressing what it could do in the future.

Nor did the legislative history of section 516 indicate it intended to overturn the IWC's determination that allowing healthcare workers to waive a second meal period is consistent with promoting workers' health and welfare. Accordingly, the IWC adoption survived the enactment of section 516, and the court did not need to address SB 327 to reach its conclusion.

What This Means For California Healthcare Employers

The *Gerard I* decision caused chaos when it overturned decades of common understanding regarding healthcare workers and meal periods. Today's decision provides some much welcome news for the industry. The certainty the *Gerard II* decision provides will allow employers to institute and maintain compliant meal period policies while providing flexibility in scheduling of meal periods in managing their business.

We recommend you collaborate with your labor and employment counsel to ensure that your policies and practices are compliant with state laws, and that you are in a position to adapt to any changes made necessary by today's ruling. For more information, contact your Fisher Phillips attorney or one of the attorneys in any of our California offices:

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