

News from our Employment & Labor Group

California Supreme Court Expands Employer Liability for Meal and Rest Period Violations

A new ruling by the California Supreme Court has increased the cost to employers of failing to provide non-exempt employees with routine meal and rest breaks as required by statute. California Labor Code section 226.7 provides that if an employer fails to provide its non-exempt employees with meal periods or rest breaks, the employee is entitled to “one hour of pay” for each missed break. For the past several years, it has been hotly contested whether this “one hour of pay” is a “penalty” imposed on the employer (subject to a one year statute of limitations), or whether the pay is a “wage” for time worked (subject to a three year statute of limitations). **On April 16, 2007, the California Supreme Court decided in *Murphy v. Kenneth Cole Productions* that the “one hour of pay” is a wage subject to a three year “look back” recovery period, thereby expanding liability for employers.**

In deciding that this additional pay was intended as a “wage,” the Supreme Court determined that the legislative history of section 226.7 demonstrated an intent to compensate employees at a premium for time worked during these breaks, rather than to punish an employer. The Court also reasoned that if the Legislature had intended section 226.7 to be a penalty, then it would have labeled it as a “penalty.” The Court also noted that the plain language of the statute (“the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation”)

suggests that the additional hour of pay is a wage.

This ruling has significant impact on California employers who may be faced with meal and rest period violations. From an administrative perspective, the ruling makes payment of this additional hour of pay subject to tax withholding and employer taxes. From a litigation perspective, this ruling has several adverse affects. First, the characterization as a wage now allows an employee to reach back at least three years (as opposed to one year) to recover for missed meal periods and rest breaks. Second, additional penalties may attach if an employer neglects to pay upon termination all additional hours of pay for missed meal and rest breaks that occurred over the prior three years. Third, successful plaintiffs may now attempt to recover attorneys’ fees and costs under Labor Code Section 218.5 (applicable to actions brought for the nonpayment of “wages”) for bringing meal and rest period claims.

Thus, as a practical matter, California employers should exercise great care in ensuring that they are compliant with statutory meal and rest break requirements. Specifically, employers must “authorize and permit” non-exempt employees to take paid, ten-minute rest periods for every four-hour period of work or major fraction thereof. (A major fraction is more than two hours. No rest period is required if the employee works less than three and one-half hours in the day.) Moreover, employers are prohibited from (a) employing any person for a

period of more than five (5) hours without a meal period (unpaid) of not less than 30 minutes or (b) employing any person for a period of more than 10 hours without two meal periods. Finally, meal periods may not be waived, except under limited circumstances. Thus, unless the meal period

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has been expressly and validly waived, the employer must require non-exempt employees to take meal periods.

The *Murphy* decision leaves several questions unanswered. For example, *Murphy* does not address whether a plaintiff asserting a claim for unpaid wages as a result of a meal or rest period violation can extend the statute of limitations to four years, the limitations period applicable to claims under the Unfair Competition Law (“UCL”). (The California Supreme Court has permitted claims for earned wages to be asserted under the UCL. See *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163, 178 (2000).) In addition, *Murphy* does not address whether an employer who fails to provide both a meal period and rest break in the same day is liable for one additional hour of pay per missed meal period or rest break or a maximum of one additional hour of pay per day on which one or more meal periods or rest breaks were missed.

We would be happy to discuss the *Murphy* decision or to answer your questions about meal and rest break requirements.

If you have any questions about this *Alert*, please contact one of the attorneys listed above. ■