Got Lunch?

California Supreme Court Expands Employer Liability for Missed Meal and Rest Periods

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Got lunch? If counsels' or clients' employees don't get lunch, management should force them to take the time, particularly in view of a recent California Supreme Court decision. In a unanimous ruling, the court in *Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094 highlighted the importance of this for all California employers.

Under California law (Labor Code Section 512 and the California Industrial Welfare Commission Wage Orders), all non-exempt employees who work five or more hours must be provided a duty-free meal period of at least 30 minutes. In addition, employers must provide non-exempt employees a 10 minute rest period for every four hours worked. If employers fail to comply with these laws, employers must provide one additional hour of pay at the employee's regular rate for each workday a violation occurs. This can result in an additional two hours pay per day if an employee misses both lunch and a rest break on a given day.

In *Murphy*, the court considered whether the meal and rest period penalties were "wages" or "penalties." If wages, the statute of limitations is three years, meaning an employer could face three years of additional payments to employees. If penalties, the statute of limitations is only one year.

Unfortunately for employers, the court ruled that these payments constitute wages, and therefore are subject to the three-year statute of limitations.

The Supreme Court's decision opened the door to increased and costly litigation for employers and will undoubtedly have significant impact on employment litigation. The extended statute of limitations expands the class of plaintiffs and exposes employers to greater liability. Employees who do not receive all Section 226.7 pay on a timely basis can also assert additional claims under Labor Code Section 203, which provides that if an employer willfully fails to pay any wages of an employee who is discharged or quits, the wages of the employee shall continue for up to 30 days. Employees may also possibly seek penalties for failure to provide proper itemized wage statements under Labor Code Section 206, attorney's fees and interest.

The Division of Labor Standards Enforcement (the labor commissioner's office) opined that the employer carries the burden to ensure employees take their meal breaks. After *Murphy*, it is more important than ever that employers remain cognizant of the risks regarding missed meal and rest periods. Employers should review their policies and procedures. Handbooks should contain comprehensive policies detailing both employer and employee obligations.

Employers should explain policies to employees, and have employees sign acknowledgements of receipt. Managers and supervisors should be trained to review employee timecards to ensure appropriate meal periods have been taken and documented. Finally, employers should discourage employees to work through or skip meal periods.

Murphy demands that employers take preventive steps to ensure they are not subject to unnecessary and costly litigation. Employers are wise to take immediate action, including consulting with counsel, to ensure compliance with state and federal laws.

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