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Client Alert

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California Supreme Court Gives Employers No Break

Exponentially Expanding Employer Liability

The California Supreme Court dealt another blow to employers on Monday by ruling that the statute of limitations governing claims for meal or rest period violations is effectively four years. In so holding, this ruling exponentially expands employer liability for violations of California's meal and rest period requirements

The controversy has been brewing since 2000 when California enacted Labor Code Section 226.7, providing non-exempt employees an additional one hour of pay for each day that a meal or rest period was not provided as required under the California Wage Orders. Employer groups and the California Division of Labor Standards Enforcement ("DLSE") had asserted that claims under Section 226.7 were subject to a one-year statute of limitations as a penalty, whereas plaintiffs' attorneys and labor unions asserted a four-year period applied, as with other wage claim violations.

Supreme Court Decides Issue

In *Murphy v. Kenneth Cole Productions, Inc*. the Supreme Court determined the "one additional hour of pay" required by Section 226.7 is a wage payment requirement. This is significant because under California law the statute of limitations applicable to statutory wage claims is three years and may be extended to four years under California's unfair business practices laws. This ruling rejects the position of the DLSE, Governor Schwarzenegger and employers who asserted the additional one hour was a penalty governed by the shorter one-year limitations period.

California's Meal and Rest Period Requirements

Subject to certain exceptions, the California Wage Orders generally apply to all employers with even one employee and require:

- Non-exempt employees must be *permitted* a 10 minute paid rest period for every four hours of work or major fraction thereof.
- Rest periods should be as close to the middle of each four hour work period as possible.
- Non-exempt employees must be provided a 30 minute unpaid meal period for every 5 hours of work.
- Meal periods must be *completely* uninterrupted and must commence prior to the start of the fifth hour of work.
- Meal and rest periods cannot be combined.

These requirements require hyper-technical compliance. In fact, employers may be liable under Section 226.7 even if meal or rest periods are provided. For example, the DLSE takes the position that if an employee begins work at 7:00 A.M. and the employee decides to take his/her meal break at 12:30 P.M., the employer is in technical violation because the meal break did not commence *before* the start of the fifth hour of work. Under these circumstances, the DLSE's view is that the employer owes the employee one additional hour of pay.

Quadrupling Liability

While the decision resolves a technical issue arising under the Labor Code, the ruling has two primary effects that will greatly impact employers:

(1)With the statute of limitations firmly established at four years, employers who are not in technical compliance may have their exposure for meal and rest period claims quadrupled. Additionally, employers who have rectified prior non-compliance may now have liability exposure back on their books that previously was viewed as expired;

(2)In addition to the Section 226.7 one-hour payment, employers many now be liable for additional "waiting time penalties" under California Labor Code Section 203. That is so because, as a wage, this additional one-hour payment is subject to California's requirement that all wages be paid at the time of termination. Consequently, if an employer has failed to provide even one required meal or rest period and failed to make the additional one-hour wage payment at termination, the employer can be liable for up to 30 days of continuing wage payments, or "waiting time penalties", under California Labor Code Section 203. Obviously, this makes even one technical mistake quite costly.

Cases alleging violations of meal and rest period laws are often brought as class actions. *Murphy* broadens the size of those potential classes to include employees terminated up to four years prior to the date an action was/is filed. The exposure in these class actions obviously can be in the tens of millions of dollars, as demonstrated by the $172 million verdict against Wal-Mart for such violations.

Significantly, as was the case in *Murphy*, Section 226.7 claims are often ancillary to the claims of employees who allege they were wrongfully classified as exempt under California's more stringent standards. Consequently, employers who have proper meal and rest period procedures for their non-exempt employees may nonetheless be vulnerable if they have improperly classified employees as exempt.

Protecting Employers

Proskauer attorneys have already been working with members of the California State Legislature to craft legislation to overturn or minimize the effects arising from meal and rest period violations. Nonetheless, employers can better insulate themselves from such claims by adopting these best practices:

- Ensure handbooks, policies and procedures governing meal and rest periods are up to date, compliant, and that they advise employees they may be subjected to discipline for failing to take meal or rest periods;
- Ensure all employees sign an appropriate acknowledgment of the policies;
- Ensure there is a procedure for employees to promptly report missed rest or meal periods, as well as any suspected improper wage payments;
- Educate mid-level managers and supervisors in the requirements of the law and hold them accountable for enforcement;
- Discipline employees for failing to take required meal or rest periods and discipline supervisors for failing to properly enforce the policies;
- Appropriately make the additional one-hour payment as wages for any non-exempt employees who fail to take required meal or rest periods, separately noting such payments on employees' itemized pay statements;
- Maintain proper records of meal and rest periods (while the law only requires records be kept for meal periods, we recommend records be kept evidencing both meal and rest period compliance);
- Perform a wage-hour classification self-audit from time to time to ensure that all employees — exempt and non-exempt — are properly classified.

While the California Supreme Court's decision certainly raises the stakes of non-compliance, employers can insulate themselves from much of its impact by paying appropriate attention to development and enforcement of lawful policies. As Proskauer attorneys have experience counseling employers through the process of classification self-audits and the reclassification of improperly classified employees, please do not hesitate to contact us if we can be of assistance.

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