Proskauer

Labor Commissioner Issues New Guidance on Breaks

California Employment Law Blog on **December 23, 2017**

The California Labor Commissioner recently issued a Frequently Asked Questions (FAQ) memo regarding breaks and lactation accommodation. The FAQ memo contains no new concepts, but emphasizes the following longstanding principles:

- California employers must authorize and permit a net 10-minute paid rest period for every four hours worked (or major fraction thereof). To the extent practicable, the rest period should be in the middle of the work period. An employee is entitled to one hour of pay at the employee's regular rate for each workday that a rest period is not provided;
- A "net" of 10 minutes means that the rest period begins when the employee reaches an area away from the work area that is appropriate for rest;
- Employers are required to provide suitable resting facilities that shall be available to employees during working hours in an area separate from toilets;
- If the nature and circumstances of the employee's work prevent the employer from giving the break as close as possible to the middle of the four-hour period, the employee must still be given the break but at another point in the work period;
- Working through rest periods does not entitle an employee to leave work early or arrive late;
- An employer may not require an employee to remain on premises during a rest period;
- An employer may not require that an employee remain in radio communication during a rest period;
- Smokers are not entitled to additional rest breaks;
- The 10-minute rest periods are not designed to be exclusively for use of toilet facilities. The Labor Code and Industrial Welfare Commission Wage Orders contemplate that employees also will be permitted to limited breaks to use toilet facilities, and allowing employees to use such facilities does not satisfy the employer's obligation to provide required rest breaks;

- Employers are required to provide a reasonable amount of break time to accommodate an employee desiring to express milk for the employee's infant child. If possible, the break time is to run concurrently with any break time provided to the employee. Break time that does not run concurrently with rest breaks need not be paid. An employer is not required to provide an employee break time for purposes of lactating if doing so would seriously disrupt the operations of the employer;
- The employer is to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area for the employee to express milk in private. (Note, however, that federal law prohibits employers with 50 or more employees from requiring employees to express breast milk in a bathroom.)

The Labor Commissioner advises employees that they may file claims if their employers fail to meet their break obligations.

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