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California Supreme Court Adds Fuels to Meal and Rest Break Litigation by Adopting Cumulative Penalties

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For the last couple of years, we have been keeping an eye on [Naranjo v. Spectrum Security Services, Inc.](#) as it's made its way through the California state courts. Now, the California Supreme Court has issued its unanimous decision with wide-ranging ramifications over meal and rest break violations. As a result of the Court concluding that premium pay for meal and rest break violations is "wages," it has paved the way to award as well waiting time and wage statement penalties based on meal/rest period violations. The practical impact of this decision is to encourage class action and PAGA (Labor Code Private Attorneys General Act) litigation within the state, providing plaintiffs' attorneys further remedies in meal and rest period litigation and inflating the settlement value of these cases.



Meal and Rest Break Premiums Are Considered "Wages"

The first issue that the Court considered in *Naranjo* was whether premium pay available pursuant to Labor Code section 226.7 for meal/rest period violations is considered "wages." Section 226.7 provides that an "employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that [a] meal or rest period is not provided."

The Supreme Court found that "[a]lthough the extra pay is designed to compensate for the unlawful deprivation of a guaranteed break, it also compensates for the work the employee performed during the break period." Therefore, the Court concluded, "[t]he extra pay...constitutes wages subject to the same timing and reporting rules as other forms of compensation for work."

In reversing the Court of Appeal, which held that meal/rest period premium pay did not constitute wages, the Supreme Court noted that the reasoning rested on a "false dichotomy," namely that the payment must be either a legal remedy or wages. The Court held, for purposes of Section 226.7, premium pay is both a legal remedy *and* wages, which leads us to the next holding in the case.

Meal and Rest Period Violations Trigger Waiting Time and Wage Statement Penalties

The second issue that the Court considered was whether the premium pay for meal and rest break violations constitutes wages for the purpose of awarding waiting time penalties. Labor Code section 203 provides for waiting time penalties of up to 30 days’ wages where the employee’s wages remain outstanding upon termination. The Supreme Court ruled that the premium pay for meal/rest break violations was due at the end of the employment and the failure to pay such premiums provided for the recovery of waiting time penalties.

The next issue that the Court considered was whether employers have an obligation under Labor Code Section 226 to report premium pay for missed breaks and include that amount on the employees’ wage statements. After holding that meal and rest break premiums are considered both a legal remedy and wages, the Court concluded that “an employer’s obligation under Labor Code section 226 to report wages earned [on itemized wage statements] includes an obligation to report premium pay for missed breaks.” The Court further explained that this means that, if all other conditions under section 226 are met, an employer can be liable for a wage statement claim for failing to report premium pay accurately.

The Court reasoned that Section 226 requires “each payment of wages” with “an accurate itemized statement” specifying, among other details, the “gross wages earned” and “net wages earned.” It goes on to interpret these requirements as “all amounts earned and now owing, not just those amounts actually paid.” Therefore, the Court ruled, “[a] statement that conceals amounts earned, on the ground that they also were not paid, is not an accurate statement, and it does not comply with the statute.”

Under Labor Code section 226(a), an employer may be liable for “damages” plus attorney’s fees for failing to properly report meal and rest break premiums on an employee’s wage statement. The damages are the greater of the employee’s actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent period. The aggregate penalty may not exceed \$4,000.

What is the Practical Impact of the Court’s Decision?

The following example demonstrates the potential exposure for meal and rest period violations following this decision. Let’s examine an employer’s potential liability where an employee earns \$30 per hour (with no incentive compensation), works a 40 hour weekly schedule, and has meal and rest period violations for 50 individual workdays over 25 payroll periods. The employer liability would be as follows:

Premium pay for meal period violations (\$30 x 50 work days)	\$1,500
Premium pay for rest period violations (\$30 x 50 work days)	\$1,500

Waiting time penalties (30 days of wages – \$240 work day x 30)	\$7,200
Wage statement violations (\$50 for initial pay period, \$100 for each subsequent violation, where knowing and intentional violation – \$50 x 1 plus \$100 x 24 potentially)	\$2,450
Total	\$12,650

In summary, the decision increases the exposure from \$3,000 to \$12,600 when considering penalties for waiting time penalties and wage statement violations. Because meal and rest period claims can be pursued for up to a four-year limitations period in litigation, the amount of recoverable premium pay is often significantly greater. It is important to recognize as well that the employer can be liable for PAGA penalties with compounded penalties for these types of violations.

Take Aways for Employers

Unfortunately, the decision leaves employers with little room for error. It follows a line of California Supreme Court decisions dealing blows to employers. *Donohue v. AMN Service, LLC* – as we discussed in a [prior blog post](#) – rejected rounding practices for meal period time entries and found a rebuttable presumption of meal period violations where the time records showed missed, delayed or short meal periods. Then, as we covered in another [blog post](#), the California Supreme Court in *Ferra v. Lowes Hollywood Hotel, LLC* concluded that “the rate of compensation” for the purpose of determining the additional hour of pay due to employees who are not provided meal, rest or recovery periods is synonymous with the overtime rate of pay and must include all nondiscretionary payments, not just hourly rates.

To minimize exposure in any potential wage and hour litigation over meal and rest period practices, it is advisable for employers to do the following, in addition to maintaining effective meal/rest period policies and procedures:

1. Conduct regular documented training of employees and their supervisors/managers on the employer’s expectations concerning meal/rest periods.
2. Develop an electronic timekeeping acknowledgement, providing for employees to affirm that their timekeeping records are accurate and that they were allowed to take timely, complete meal/rest breaks.
3. Where practicable, consider scheduling and calling out meal and rest breaks for employees.
4. Engage in routine audits of employee time records and meal/rest break practices to ensure compliance. Consider paying premium pay for instances where the time records show that employees did not take a timely, complete meal period and otherwise where the employer is aware of employees not taking rest

breaks.

5. Develop a disciplinary process for addressing circumstances where employees elect, on their own, not to take meal/rest breaks, or managers interfere with an employee's ability to take such breaks.

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