

Meal and Rest Breaks

By D. Carlos Kaslow, Esq. – SSA General Counsel

When the largest companies doing business in California are involved in litigation over a single employment issue, all employers should pay attention. Plaintiffs' attorneys have made filing lawsuits against employers for failing to comply with the state's meal and rest break rules into a booming and lucrative business. Dozens of the state's largest companies have been sued over meal and rest breaks during the past five years, including Public Storage, UPS and Brinker Restaurant Corp.

Meal Periods

When a non-exempt employee is not given the legally mandated meal and rest breaks, an employer can be liable to the employee for up to two additional hours of pay for each day the breaks are not provided. The California Industrial Welfare Commission provides the following rules for meal breaks:

- A. No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- B. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- C. If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

Rest Periods

If the employee is free to come and go from the workplace, the employee is not required to be paid for the meal break period. The rest period must be provided to employees

who work a shift of 3.5 hours or more. A rest break is paid work time and the employee can be required to stay on the work premises during breaks.

- A. Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.
- B. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

Employer's Responsibilities

The employer has the responsibility to make meal and rest breaks available to workers. The law is unclear if employers have an affirmative duty to make sure that each employee takes the break. A case that will answer this question has been pending in the California Supreme Court for over two and a half years. Oral arguments have not been scheduled so it may be well into 2012 before employers and workers have an answer. The majority of the courts of appeal that have ruled on this issue have ruled that employers are only required to provide for meal and rest breaks but are not required to make sure employees take advantage of the free time.

Federal law does not require employers to provide meal and rest breaks. However, if short breaks (5 to 20 minutes) are provided, the employee must be paid. About half the states provide that employees must be given meal breaks if they work a specified number of hours per day. Only eight states require that workers be given rest breaks. California leads the nation in meal and rest litigation but plaintiffs' lawyers in other states are taking note. ❖