



STATE & LOCAL UPDATES

California Employees Must Have Uninterrupted Rest Breaks



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REUSE PERMISSIONS

Employers in California can't require workers to remain on duty or "on call" during their rest breaks, according to the California Supreme Court.

"During required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time," the state high court said in a Dec. 22, 2016, opinion.

In light of this ruling, employers shouldn't require or suggest that employees carry company pagers, phones or other communication devices during their rest breaks, said Barbara Harris Chiang, an attorney with Kaufman Dolowich & Voluck in San Francisco.

Chiang said she doesn't think the ruling means that employers should say workers can't take their communication devices on rest breaks, just that they are not required to.

Employers need to take a look at the communications provided in their handbooks, policies and breakroom postings and make sure nothing sounds like the company is trying to restrict or control employees' activities during rest breaks, explained Todd Wulffson, an attorney with Carothers DiSante & Freudenberger LLP in Orange County, Calif.

If it appears a company policy is trying to regulate what employees do on their breaks, it should be revised, he added.



Steep Penalties

Nonexempt employees in California are generally entitled to take a paid, 10-minute rest break for every four hours worked (or major fraction thereof). Employers can't encourage employees to work during this time.

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Violations of this law carry significant penalties: Employee must be given an additional hour of pay for each workday that their full rest breaks aren't provided.

In *Augustus v. ABM Security Services, Inc.*, the state high court was asked to rule on whether a security company violated California law by requiring its guards to carry radios and remain on call during rest periods.

The security guards argued that they weren't relieved of all duties as required by state law. The company, however, said that the guards were merely required to carry a radio or pager and frequently took uninterrupted rest breaks. They only had to respond in rare circumstances or in an emergency.

A trial court found in favor of the guards and awarded them more than \$90 million in damages, interest and penalties. The California Court of Appeal vacated the judgment, finding that being on call isn't the same as working during a rest break.

But the California Supreme Court reversed the court of appeal. "What we conclude is that state law prohibits on-duty and on-call rest periods," the state high court said.

Tips for Employers

The ruling says that on-duty or on-call rest periods aren't permitted, at least under Wage Order 4, which is the relevant state wage order in this case, Chiang said.

If a rest period is interrupted, an employer should allow the employee to restart the break, she suggested. If that isn't possible, or if too much time has passed for the rest period to be meaningful, the employer can voluntarily pay the hour penalty.

Chiang noted that rest periods shouldn't be interrupted on a regular basis. "An employee should only be summoned back to work in irregular circumstances, such as emergencies," she said.

She added that employers may want to suggest that employees take their rest breaks away from their workstations, even though the ruling doesn't address this. That way, employers may avoid inadvertently violating the rest-break law.

"Otherwise, a manager might walk over to the employee's workstation and start talking about work without knowing the employee is on break," she said.

The key takeaway for HR professionals is to check the company's policy and make sure it tells employees what their entitlements are while they're on rest breaks and that it does nothing to take those entitlements away, Wulffson noted.

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