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Missed Meal and Rest Periods Can Expose Employers to Three Years' Liability.

Missed Meal and Rest Periods Are Wages

Today, the California Supreme Court held that the statute of limitations for violations of California Labor Code section 226.7, for failure to provide employees with meal and rest periods, is three years. An employer that fails to give her employee a meal and/or rest period must pay the employee one additional hour of pay for every meal and rest period missed. In *Murphy v. Kenneth Cole Productions, Inc.* (filed April 16, 2007) S140308, the question before the California Supreme Court was whether the employer's obligation to pay "one additional hour of pay" under Section 226.7 is a penalty (subject to a one-year limit), or a wage (subject to a three-year limit).

The Lower Court and DLSE Disagreed

In May 2004 the trial court in *Murphy* held that the "one additional hour of pay" is a wage subject to a three-year limitation. In May 2005 the Department of Labor Standards Enforcement (DLSE) issued proposed regulations suggesting the "one additional hour of pay" is a penalty subject to a one-year limit. Thereafter, the Court of Appeal also held that the employer's violation of section 226.7 is a penalty and is subject to a one-year limitation.

The California Supreme Court Rules – A Blow to Employers

Ultimately, the Supreme Court held that numerous factors, including California's expressed interest in broadly construing statutes to protect employees, suggest the one additional hour of pay is a wage subject to a three-year limit.

What does this mean for employers?

Employers should take reasonable and appropriate efforts to ensure their employees take meal and rest periods. Employers also should keep accurate time records that document when employees take their meal and/or rest periods.

Employers should review their document retention policies regarding employee time records. Employers currently are required to keep certain employee time records for at least three years. In addition to just complying with this law, employers are better able to defend against claims of missed meal and rest periods if their documents are complete and accurate.

Employers should include in an employee's final paycheck payments for any missed meal or rest periods. The Supreme Court's decision suggests that the "one additional hour of pay" is a wage which is payable immediately upon termination. Employers may be subject to waiting time penalties (one day's wages for every day the payment is late, for a maximum of thirty days) for failure to include these payments in an employee's final paycheck.

Employers should consult with counsel to determine how *Murphy v. Kenneth Cole Productions, Inc.* and other considerations discussed above may impact their business. If you have any questions, please contact one of the lawyers in Hoge Fenton's Employment Group.

For more information, please contact a member of our employment group:

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