



Meal and Rest Period Penalties

The California Supreme Court in *Murphy v. Kenneth Cole Productions, Inc.* has held that the appropriate statute of limitations on a claim for meal or rest period violations is three years (the statute of limitations for wage violations) and not one year (the statute of limitations for a penalty). The Court determined that the language which requires the employer to give the employee “one additional hour of pay” if the employee does not get proper meal or rest breaks is a wage payment requirement and not a penalty.

This holding is significant because the potential liability for an employer whose employees have not received meal and rest breaks in compliance with the law is now much greater. Also, as wages and not a penalty, an employer can bring suit for such a violation as an unfair business practice with a statute of limitations of four years. Finally, an employer may be required to pay up to 30 days’ wages if an employee upon termination does not receive all wages due; so the failure to provide these one hour payments for missed meals or breaks could result in further liability for the employer.

It is highly likely that this ruling will result in a significant increase in the number of suits brought for violations of meal and rest period requirements, including class actions. Therefore, it is now more important than ever for an employer to make sure that the law is strictly followed. That means, for most employers, employees must be given a meal break for every five hours worked (with some flexibility for the second meal period, if necessary) and every employee must be permitted to take a rest break (ten minutes) for every four hours worked (or major fraction thereof). Employers should have in place procedures to ensure that meal and rest periods are taken; employees are subject to disciplinary action for not complying with requirements; employees know how to report a problem with regard to meal or rest breaks; and appropriate records are maintained.

For further assistance on compliance with this or other issues, contact Jeanne Flaherty at Employer’s Legal Advisor, Inc.

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