

Labor & Employment Law E-Alert

Vorys, Sater, Seymour and Pease LLP

UNANIMOUS CALIFORNIA SUPREME COURT HOLDS A THREE-YEAR STATUTE OF LIMITATIONS APPLIES TO MEAL AND REST CLAIMS

In *Murphy v. Kenneth Cole Productions, Inc.*, – Cal. Rptr.3d –, 2007 WL 1111233 (April 16, 2007), a unanimous California Supreme Court ruled that an employee pursuing state law claims for meal and break periods he missed during his employment had three years to file a claim for the “additional hour of pay” remedy provided in California Labor Code §226.7.

Section 226.7 states that if an employer fails to provide a mandated meal or rest period, “the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.” Until now, it was a hotly contested issue as to whether that additional hour of pay constituted a “wage” or a “penalty.” If the additional pay was a wage, it was subject to a three-year statute of limitations. If, on the other hand, it was a penalty, it would be subject to a one-year statute of limitations.

In *Murphy*, the Court recognized that Section 226.7’s language is ambiguous and could reasonably be interpreted to provide for either a wage or a penalty. However, according to the Court, the overall language, purpose, and legislative history of the additional pay provision in Section 226.7 showed that the additional pay was a form of wages.

The immediate impact of the Court’s ruling is that employers in California are exposed to three years of liability for alleged meal and rest break violations. And if an employee also claims the employer has violated California’s Unfair Competition Law, the statute of limitations for meal and rest break violations extends to four years. The *Murphy* Court seemed unconcerned by the fact that over time employers may lack adequate records or that witnesses may no longer be available: “Because employers are required to keep all time records, including records of meal periods, for a minimum of three years, employers should have the evidence necessary to defend against plaintiffs’ claims.”

It is likely that the *Murphy* decision will fuel increased litigation by employees claiming they were denied meal or rest breaks and increased back pay exposure for employers caught up in that litigation. Consequently, employers with operations in California should review their meal and rest break policies (as well as the actual practices) and their record-retention policies to help defend against these claims.

If you have any questions about this or any other employment-related issue, please contact your Vorys lawyer.

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