California Supreme Court Prohibits Rounding of Meal Periods

Related Attorneys

Cory D. Catignani

Michael C. Griffaton

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Labor and Employment

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California employers are familiar with the complexities of the state's wage-hour laws, as well as the Draconian penalties for noncompliance. Recently, in *Donohue v. AMN Services, LLC*, the California Supreme Court added to employers' administrative difficulties and litigation exposure when it examined the practice of rounding time punches in the meal period context. Perhaps unsurprisingly, the Court held this was impermissible. The Court ruled that employers may not round time punches for meal periods, and time records showing non-compliant meal periods raise a rebuttable presumption of liability for meal period violations.

Under California law, employers must generally provide employees with one 30-minute meal period that begins no later than the end of the fifth hour of work and another 30-minute meal period that begins no later than the end of the tenth hour of work. If an employer does not provide an employee with a compliant meal period, then the employer must pay the employee one additional hour of pay.

In *Donohue*, the employees' time punches were rounded to the nearest 10-minute increment. If an employee clocked out for lunch at 11:02 a.m. and clocked in at 11:25 a.m., the time system would have recorded the time punches as 11:00 a.m. and 11:30 a.m. So, while the actual meal period was only 23 minutes, a 30-minute meal period would have been recorded. And if the employee clocked in for work at 6:59 a.m. and clocked out for lunch at 12:04 p.m., the time system would have rounded the punches to 7:00 a.m. and 12:00 p.m. As a result, the actual meal period started after five hours and five minutes of work, but the time system would have recorded the meal period as starting after exactly five hours of work. In both cases, the meal period would not comply with California law. One was too short; the other was too late.

The Court held that meal periods had to be just right because the Labor Code and Wage Orders "set precise time requirements for meal periods." In the meal period context, this means employers cannot engage in the practice of rounding time punches to the nearest preset time increment. "The meal period provisions are designed to prevent even minor infringements on meal period requirements, and rounding

is incompatible with that objective." "By requiring premium pay for any violation, no matter how minor, the structure makes clear that employers must provide compliant meal periods whenever such a period is triggered."

In *Donohue*, the class members were actually overcompensated as result of the rounding practice. But that doesn't matter when it comes to paying meal period premiums for shortened or missed meals. All that matters is strict compliance with both the length of the meal period and the timing of the meal period. "To avoid liability, an employer must provide its employees with full and timely meal periods whenever those meal periods are required."

With respect to compliance, the Court reiterated "the employer is not obligated to police meal breaks and ensure no work thereafter is performed. There is no meal period violation if an employee voluntarily chooses to work during a meal period after the employer has relieved the employee of all duty." Further, "the employer is not liable if the employee chooses to take a short or delayed meal period or no meal period at all."

Ensuring – ***and recording*** – an employee's voluntary choice is the key to whether an employer will be found liable for meal period violations. The Court held that time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations. "If the records are accurate, then the records reflect an employer's true liability" On the other hand, "if the records are incomplete or inaccurate — for example, the records do not clearly indicate whether the employee chose to work during meal periods despite bona fide relief from duty — then the employer can offer evidence to rebut the presumption." This means employers whose time records do not show compliant meal periods are presumed to have violated their meal period obligations. However, "applying the presumption does not mean that time records showing missed, short, or delayed meal periods result in automatic liability for employers." Employers may "rebut the presumption" of liability by presenting "evidence that employees were compensated for noncompliant meal periods or that they had in fact been provided compliant meal periods during which they chose to work."

In light of *Donohue*, employers need to reassess their timekeeping and recordkeeping policies concerning meal periods – especially if they are using rounding. Given technology, the Court noted that "the practical advantages of rounding policies may diminish further." Employers also should consider implementing employee attestations or other means of recording an employee's voluntary choice not to take a meal period or to take a short or late meal period. Contact your Vorys lawyer for assistance in implementing best practices for meal period compliance.