Labor and Employment Alert: California Supreme Court Prohibits On-Call Rest Periods

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California generally requires employers to provide their non-exempt employees with a 10 minute rest period for each four hours of work or major fraction thereof. Recently, in *Augustus v. ABM Security Services*, the California Supreme Court ruled that California law "prohibits on duty and on-call rest periods." Thus, "during required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their period time."

Augustus involved a class action filed on behalf of security guards who worked at ABM. The guards were required "to keep radios and pagers on, remain vigilant, and respond if the need arose" during their rest periods. ABM contended that the guards were simply on call to respond if needed, but otherwise regularly took uninterrupted rest periods. The trial court held that an on-call rest period constituted "work" and awarded $90 million in damages and penalties. The Court of Appeals reversed, finding that merely being on-call did not amount to "work" within the meaning of the California Labor Code. The guards appealed and, the California Supreme Court ultimately determined that "on-call rest periods are impermissible."

After analyzing the Wage Orders and statutory provisions mandating rest periods, the Supreme Court concluded that the construction "that best effectuates the order's purpose and remains true to its provisions is one that obligates employers to permit — and authorizes employees to take — off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." The Court explained that a rest period means the employee is "free from labor, work, or any other employment-related duties."

Next, the Court determined that on-call rest periods are not permitted under California law. The Court reasoned that forcing employees to remain on call during a 10-minute rest period is "irreconcilable with employees' retention of freedom to use rest periods for their own purposes." Consequently, employers must relieve their employees of all work-related duties and any employer control during rest periods —

including the obligation that employees remain on call. “A rest period, in short, must be a period of rest.”

In an apparent effort to ease employers’ concerns about the ramifications of this ruling, the Court explained that nothing “circumscribes an employer‘s ability to reasonably reschedule a rest period when the need arises.” Thus, an employer can provide employees with another rest period to replace one that was interrupted or pay the premium pay. But at the same time, the Court warned that “neither of these options implies that employers may pervasively interrupt scheduled rest periods, for any conceivable reason — or no reason at all. Rather, such options should be the exception rather than the rule, to be used when the employer — because of irregular or unexpected circumstances such as emergencies — has to summon an employee back to work.” What constitutes an “emergency” is undefined and left to case-by-case development (and probably future litigation).

The Supreme Court has added another layer of complexity to California’s rest and meal period laws. Employers will need to ensure that employee rest periods are truly restful. Otherwise, employers will pay the price in rest period premiums and/or damages in class actions. Contact your Vorys lawyer if you have questions about complying with California’s wage-hour laws.