

## Ruling Leaves Employers Vulnerable on Rest Periods

### Clear Monitoring, Records Essential for Companies

In a stunning defeat for employers, the California Supreme Court has just tripled the ante for employers who fail to give their employees legally mandated time off for daily meal and rest periods.

The court's decision came in a case by a former assistant manager who worked for upscale retailer Kenneth Cole. The new case makes clear that employers are liable for back pay equal to one hour's pay for every non compliant meal or rest period going back for at least three, and quite possibly four years.

This new ruling means that employers have no choice now but to take aggressive, systematic steps to ensure that they abide by the new standard, since the alternative is to risk possibly ruinous claims from their employees.

The case grew out of a complaint by John Paul Murphy, manager of a Kenneth Cole retail clothing store in San Francisco. Classified by his employer as an "exempt" employee – meaning one not subject to the state's detailed wage and hour laws – Murphy commonly worked long hours on the store's sales floor or in its stockroom and ate his meals at his desk while answering phone messages and e-mail.

California labor law requires that employers give all non-exempt workers one ten-minute break for every four hours of work plus at least a 30-minute, uninterrupted meal break for every five hours of work. The State's Labor Commissioner has issued an enforcement guidance providing for how the meal break rules work. The guidance mandates that the meal break cannot come before the beginning of the third hour of work and must begin before the end of the fifth hour of work. Also, the actual time of day that the meal break begins and ends must be recorded on the company's payroll time keeping records, even if the employee is paid for the meal break. Of course, the employee must receive the full thirty minute meal break and should not be interrupted with work tasks while doing so.

Kenneth Cole mistakenly thought these provisions did not apply to Murphy as manager of the San Francisco store. Having quit his job, Murphy filed an administrative wage claim with the state Labor Commissioner seeking compensation for unpaid overtime plus "wait-



### EMPLOYMENT LAW

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ing-time" penalties for wages owed but not paid when he quit – another requirement of California labor law. Following a hearing, the Labor Commissioner ruled Murphy a non-exempt employee and awarded him the overtime pay plus interest and waiting-time penalties.

#### New question

That, however, did not settle the matter. Kenneth Cole appealed the ruling to the state Superior Court, requesting a full trial of the matter, and this allowed Murphy to introduce a new question – whether he was due additional compensation for missed rest and meal periods.

Murphy won that go-round, by and large, along with the next, before the state Court of Appeal, but that court ruled that he was due only one year's worth of pay for the missed rest and meal periods. The lower court found that Murphy was entitled to the protection of the state's wage laws even though his employer classified him as an "exempt" employee. Looking at Murphy's actual job duties, the lower court found that Murphy was erroneously classified as overtime exempt. As such, not only was he entitled to overtime pay for all the extra time he worked, but also extra pay for each day that he was not afforded the requisite meal and rest periods.

Both sides appealed the case to the state Supreme Court – Murphy because he wanted three years' pay for the missed rest and meal periods; Kenneth Cole because it thought it had been right all along.

The Supreme Court took up the case to settle an important technical issue: whether the extra payment for the missed meal/rest period violation was a "penalty" or just additional "wages". If a penalty, then Murphy could only collect for a year. If a wage, he could go back three years. Murphy urged the court to adopt the longer three year rule and the State Supreme Court agreed with him.

Though the ruling ends the matter for Kenneth Cole, which must now pay Murphy for three years' worth of missed rest and meal periods, the ruling paves the way for class action lawyers to take on employers for the huge monetary liability which these rules create. The California Labor Commissioner's enforcement

guidance allows employees to collect one hour of pay for every missed meal break and an additional one hour's pay where one or both of the 10 minute rest breaks are not afforded.

Since the rules hold employers responsible for making sure the meal and rest breaks are taken, employers cannot leave it up to their workers to decide when, much less whether, they will take a rest or meal period. Instead, employers must require that all non-exempt workers get this time off every day and they must police the workplace to enforce the rule. Careful records must be kept.

#### Exceptions to the rule

Only two exceptions are permissible: The rule does not apply to part time workers whose shift is less than five hours. In that instance, no meal break is required (though the employee will still be entitled to a paid 10 minute rest break). If the employee is scheduled to work just six hours on a particular day, the employee may waive the meal period that day, but the employee must volunteer to do so in writing. To avoid problems later, it is recommended that this waiver be in writing. Where the employee is asked to work 10+ hours, a second meal period must be provided. However, the second meal break can be waived, provided the employee took the earlier one and the workday does not exceed 12 hours. The only other way around the meal period requirement is where the employee's work is such that they cannot be relieved of all their duties and you enter into a written "on duty meal period" agreement. This exception is rarely available and employers wishing to use it should consult with labor counsel before doing so.

California employers have paid hundreds of millions in wage hour class action settlements over the past few years, and this new ruling triples or quadruples the bounty for enterprising class action lawyers who take these cases on a contingency fee basis. The ruling will doubtless spur other cases to be filed. Since the state's wage laws are so complex, prudent employers will engage labor counsel to audit their compliance to ensure that the company's pay practices are in line with these requirements.

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