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California Supreme Court Clarifies Meal Period Obligations and Endorses Meal Period Attestation Process

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The California Supreme Court recently issued guidance to employers on important issues related to meal period compliance in California. In *Donohue v. AMN Services, LLC*,[1] the court held that: (1) California law prohibits rounding of meal period out/in punches because even "minor infringements" on meal periods amount to violations that entitle employees to one-hour of premium pay; and (2) time records showing short, late, and skipped meal periods raise a rebuttable presumption of meal period violations.

However, the court also reiterated that an "employer is liable only if it does not provide an employee with the opportunity to take a compliant meal period. The employer is not liable if the employee chooses to take a short or delayed meal period or no meal period at all." Therefore, employers can rebut the presumption of violations "with evidence of bona fide relief from duty or proper compensation." Importantly, the court approved the use of a dropdown menu attestation process—where employees indicate when entering their time if short, late, and/or missed meal periods are voluntary—as a lawful means to rebut the presumption.

California employers may wish to evaluate their meal period practices, and consider whether to adopt a meal period attestation process, in light of the decision.

Case Summary

In *Donohue*, the plaintiffs alleged, among other things, that AMN denied its employees compliant meal periods, improperly rounded time records for meal periods, and failed to pay premium wages for noncompliant meal periods. Specifically, the plaintiffs alleged that employees often did not receive meal period premium wages because of AMN's practice of rounding out/in punches for meal periods.

AMN used an electronic timekeeping system called Team Time to track its non-exempt employees' time. Employees used their work desktop computers to punch in and out, including at the beginning and end of unpaid meal periods. Employees also could manually adjust any inaccurate time punches. When an employee recorded a missed, short, or delayed meal period, a dropdown menu would appear on Team Time. The prompt required employees to select whether the potentially noncompliant meal period was the result of the employee's voluntary choice, or whether the employee was not provided a compliant meal period. If the employee recorded that he or she did not receive a compliant meal period, AMN paid the employee a meal period premium.

For purposes of calculating work time and compensation, Team Time rounded the time punches to the nearest 10-minute increment. For example, if an employee clocked out for lunch at 11:02 a.m., and clocked in after lunch at 11:25 a.m., Team Time recorded the time punches as 11:00 a.m., and 11:30 a.m. Although the meal period lasted 23 minutes, Team Time would record a 30-minute meal period. In this example, Team Time would not prompt the employee to explain the noncompliant meal period, and no meal period premium would be paid.

First, the court considered whether AMN's practice of rounding meal period out/in punches complied with California law. The court held that "employers cannot engage in the practice of rounding time punches . . . in the meal period context [because the] meal period provisions are designed to prevent even minor infringements on meal period requirements, and rounding is incompatible with that objective." The court noted "the question is not whether AMN's rounding policy resulted in proper compensation of employees for all time worked." Rather, "the issue is whether AMN's rounding policy resulted in the proper payment of premium wages for meal period violations."[2] It did not, due to the rounding of meal period entries, the court explained:

> In the meal period context, an employee receives the full amount of premium pay—one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided—regardless of the extent of the violation . . . .

Next, the court held that "time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, even at the summary judgment stage." An employer's assertion that it did relieve the employee of duty, but the employee voluntarily decided not to take the meal period, "is not an element that a plaintiff must disprove as part of the plaintiff's case-in-chief." Instead, this argument is an affirmative defense that the employer must prove by rebutting the presumption of a meal period violation. This presumption, the court concluded, applies not only to records showing missed meal periods, but also short meal periods (less than 30 minutes) or delayed meal periods (taken after the fifth hour of work for first meal periods or the tenth hour of work for second meal periods).

The court reiterated its holding in *Brinker Restaurant Corp. v. Superior Court*[3] that an employer satisfies its obligations if it relieves an employee of all duty for a timely, uninterrupted meal period, but the employee voluntarily decides not to take it. As a result, "applying the presumption does not mean that time records showing missed, short, or delayed meal periods result in 'automatic liability' for employers." Instead, employers can "rebut the resumption 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."

Helpfully, and of significant importance, the court approved the use of dropdown attestation clauses as a defense. The court explained that, but for the unlawful rounding of meal period entries, the employer's attestation process would rebut any presumption of violations:

> Employers may use a timekeeping system like Team Time to track meal period violations as long as the system does not round time punches. Team Time included a dropdown menu for employees to indicate whether they were provided a compliant meal period but chose to work, and the system triggered premium pay for any missed, short, or delayed meal periods due to the employer's noncompliance. Thus, Team Time would have ensured accurate tracking of meal period violations if it had simply omitted rounding.

Practical Implications

In light of *Donohue*, California employers may wish to take the following steps:

- Do not round meal period out/in punches.
- Have processes in place to ensure the payment of premiums for noncompliant meal periods (and rest periods).
- Adopt timekeeping practices that create a contemporaneous record of whether late, short, or skipped meal periods reflected in employees' time records are the result of voluntary decisions by employees not to take meal periods. Given the California Supreme Court's endorsement of dropdown attestation processes, employers may want to adopt that practice to bolster their defense to meal period claims.

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If you have any questions about these developing issues, or the pros and cons of different approaches to meal period attestations and premium payment processes, please do not hesitate to contact any of the following Paul Hastings lawyers:

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[1] No. S253677, 2021 WL 728871 (Cal. Feb. 25, 2021).

[2] The court noted that California courts have "concluded that employers may use rounded time punches to calculate regular and overtime wages if the rounding policy is neutral on its face and as applied," but said "[t]his court has never decided the validity" of those cases and "we are not asked to do so here."

[3] 53 Cal.4th 1004 (2012).