

## Employment Law Alert

April 17, 2007

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### CALIFORNIA SUPREME COURT RULES THAT PAYMENT FOR MISSED MEAL AND REST PERIODS IS A “WAGE” SUBJECT TO THREE-YEAR STATUTE OF LIMITATIONS

In a unanimous decision, the California Supreme Court held that the hour of pay to which non-exempt employees are entitled when they are denied a meal or rest period constitutes a wage, not a penalty. The legal significance for employers is that a claim to recover Labor Code penalties is subject to a **one** year statute of limitations, while a wage claim is subject to a **three** year statute of limitations. As a result, employers that fail to provide employees with meal and/or rest periods now face exposure for unpaid wages for up to three years prior to the filing of a claim.

California Labor Code section 226.7 provides that “no employer shall require any employee to work during any meal or rest period mandated by an applicable [wage order].” Further, if an employer fails to provide such meal periods, “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. In *Murphy v. Kenneth Cole Productions, Inc.*, the California Supreme Court resolved a controversial conflict among lower state courts of appeal, two of which held that the additional hour of pay under section 226.7 constitutes a penalty, while one held that it is a wage. <http://www.fenwick.com/publications/6.5.4.asp?mid=5>

Plaintiff John Murphy was a manager in the San Francisco store of Kenneth Cole, a nationwide clothier. Murphy initially filed an administrative complaint with the California Department of Labor Standards Enforcement (“DLSE”) alleging he was misclassified as an exempt employee and thereby denied overtime. The DLSE agreed, and awarded Murphy overtime.

Kenneth Cole appealed the DLSE ruling to the San Francisco County Superior Court, and in response, Murphy tacked on a claim to recover payment under section 226.7 for missed meal and rest periods. The superior court ruled in Murphy’s favor, finding that Kenneth Cole misclassified Murphy as exempt and thus owed him unpaid overtime as well as one hour of pay for each missed meal and rest period. Kenneth Cole then appealed to a state court of appeal, which reversed the superior court’s section 226.7 award. The court of appeal held that the 226.7 remedy was a penalty, subject to a one year statute of limitations, and concluded that Murphy’s 226.7 claim was barred because he did not assert it before the expiration of the statute of limitations. On April 16, 2007, the California Supreme Court reversed.

The Supreme Court initially found that the text of section 226.7 is ambiguous, and reasonably susceptible to either interpretation advanced by the litigants. The Court then examined the legislative history of 226.7, together with the language of and legislative intent behind related Labor Code provisions. The Court then concluded that 226.7 imparts a dual purpose—to shape employer conduct and to compensate employees—and that the statute is primarily intended to compensate employees, not punish employers. The Court also observed that other Labor Code provisions specifically refer to the term “penalty” in connection with amounts employers must pay when they fail to comply with various wage obligations (for example, Labor Code section 226.3 imposes a “civil penalty” against employers that fail to issue itemized statements to employees for each pay period). Conversely, section 226.7 does not refer to the term “penalty” in describing the additional hour of pay.

The Court also rejected the argument that the additional hour of pay should be construed as a penalty because it is imposed without reference to actual damage (since an hour of pay is owed regardless of whether the employee missed a 30-minute meal period or two 10-minute rest periods). Finally, the Court observed that the a three year statute of limitations would not impose an undue evidentiary burden on employers during litigation because employers are required to keep all time records (including records of meal periods), for a minimum of three years.

This decision not only significantly increases employers’ potential exposure for meal and rest period violations, but it is also a sobering reminder to employers to ensure that their exempt employees are properly classified. Proper classification will insulate employers from exposure for unpaid overtime as well as Labor Code section 226.7 “wages.”

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