

No California Waiting-Time, Inaccurate Wage Statement Penalties Based on Unpaid Meal Period Premiums, Court Rules

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Do meal period premiums trigger derivative liability for waiting-time penalties and inaccurate wage statements? The California Court of Appeal has ruled in the negative on the oft-asked question. *Naranjo et al. v. Spectrum Security Services, Inc.*, No. B256232 (Cal. Ct. App. Sept. 26, 2019).

The Court ruled that actions to recover unpaid meal period premiums under Labor Code section 226.7 do not entitle employees to derivative penalties under Labor Code section 203 (waiting time penalties) or section 226 (inaccurate wage statements).

Background

This case started as a putative class action filed by a former employee Gustavo Naranjo against Spectrum Security Services, Inc. Spectrum contracts with federal agencies to provide protective and detention custody services.

Naranjo worked as a security officer for Spectrum. Throughout Naranjo's employment, the company required its officers to take on-duty meal and rest periods. Spectrum's employee manual expressly stated that, except for bathroom breaks, no breaks were permitted. Its policies did not inform employees that they could revoke the on-duty meal period agreement.

After being fired for leaving his post to take a meal break, Naranjo filed a lawsuit on behalf of himself and similarly situated officers, alleging that Spectrum failed to provide meal or rest periods to non-exempt employees. He claimed that he and his fellow officers were entitled to premium pay for missed meal and rest periods under Labor Code section 226.7. He also claimed that the company's failure to timely pay meal and rest period premiums triggered automatic liability for waiting time penalties under Labor Code section 203, and for penalties and attorneys' fees for inaccurate wage statements under Labor Code section 226.

Upon receiving notice of Naranjo's suit, Spectrum issued a memorandum to employees, informing them that they must take on-duty meal and rest periods. The memorandum gave employees the opportunity to sign their acceptance of the policy, and it informed employees of their ability to revoke the agreement in writing. The memorandum also stated that the on-duty meal and rest period agreement was a condition of continued employment.

Class Certification, Trial

As the litigation progressed, the trial court granted class certification for Naranjo's claims for unpaid meal period premiums, waiting time penalties, and inaccurate wage statements. Finding Naranjo's claims for unpaid rest period premiums raised individualized questions, the trial court denied certification as to that claim.

The case proceeded to a jury trial on the claim for unpaid meal period premiums. The trial court separated the meal period premium class into two subclasses: pre-memorandum and post-memorandum.

The jury found in Spectrum's favor for the post-memorandum subclass. The trial court granted Naranjo a directed verdict in favor of the pre-memorandum subclass. It thereafter awarded the pre-memorandum subclass penalties and attorneys' fees under Labor Code section 226, but denied the claims for waiting-time penalties under Labor Code section 203. The trial court assessed pre-judgment and post-judgment interest at 10 percent each.

Court Decision

On appeal, Naranjo challenged the trial court's order denying waiting-time penalties under Labor Code section 203. Spectrum challenged the trial court's award of penalties and attorneys' fees for the derivative claims of inaccurate wage statements under Labor Code section 226.

Waiting-time penalties under Labor Code section 203 are penalties imposed on employers who willfully refuse to pay all wages due on an employee's discharge or voluntary separation from employment. Labor Code section 226 imposes penalties on an employer who knowingly and intentionally fails to provide accurate, itemized wage statements to its employees. An employee who successfully recovers under section 226 may recover attorneys' fees.

Emphasizing the "special status" wages are afforded in California, the Court of Appeal exhaustively evaluated the proper categorization of premium payments as penalties, not as wages, for purposes of liability under Labor Code sections 203 and 226.

Generally, when a non-exempt employee is not permitted to take a compliant meal or rest period, Labor Code section 226.7 requires the employer to pay the employee one hour of regular time pay for the violation. This is referred to as "premium pay." Before section 226.7 was enacted, the term "premium pay" referred to overtime payment. Naturally, the increasingly diverse usage of this phrase created uncertainty as to the proper characterization of premium pay as a wage or as a penalty.

The California Supreme Court, addressing this distinction in a case on the applicable statute of limitations, held that claims for unpaid premium payments would be treated like a wage. *See Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal.4th 1094, 1102 (2007). Providing a different perspective, the California Supreme Court held employees could not recover attorneys' fees for rest period premium pay under Labor Code sections 218.5 and 1194 because premium pay was not an action to recover unpaid wages. *See Kirby v. Imoos Fire Protection, Inc.*, 53 Cal.4th 1244, 1248, 1255-57 (2012).

The Court of Appeal reconciled and distinguished other cases addressing the decades-old premium pay "penalty versus wage" dispute. The Court also evaluated the applicable statutes and, finding that their language was clear. Accordingly, it concluded that premium payments owed under Labor Code section 226.7 are penalties, not wages for purposes of liability for waiting-time penalties and inaccurate wage statements.

The Court of Appeal affirmed the trial court's denial of waiting time penalties and reversed the trial court's award of penalties and attorneys' fees for inaccurate wage statements.

Requirements for an On-Duty Meal Period Agreement

An employer is not liable for premium pay under Labor Code section 226.7 for working meal periods when it has a valid on-duty meal period agreement (ODMPA), the Court of Appeal explained. An ODMPA is permissible when: (1) required by the nature of the work (*i.e.*, the employee cannot be relieved of all duty); (2) the employer and employee have a written agreement for on-duty meal periods; and (3) the agreement states the employee may revoke the ODMPA in writing at any time.

Spectrum appealed the trial court's entry of directed verdict in favor of the pre-memorandum meal period claim subclass. It argued that its pre-memorandum policies substantially complied with the requirements for an ODMPA. Rejecting Spectrum's "substantial compliance" argument, the Court of Appeal agreed with the trial court that Spectrum's policies were insufficient. It noted that Spectrum did not have a written agreement with the employee, and it did not inform employees of their ability to revoke the ODMPA.

Prejudgment Interest for Unpaid Meal Period Premiums

After finding liability for unpaid meal period premiums, the trial court assigned a prejudgment interest rate of 10 percent, the rate assigned for unpaid wages.

Having concluded that meal period premiums are not "wages," the Court of Appeal reversed the trial court and assigned the default civil judgment interest rate of 7 percent.

Class Certification

Naranjo appealed the trial court's order denying certification of the rest break class. Addressing Spectrum's objections, the Court of Appeal concluded that Naranjo had not forfeited his right to appeal denial of class certification because the trial court did not deny certification for all of his claims.

The Court of Appeal also reversed the trial court's denial of certification because Spectrum maintained uniform rest period policies. Any individual questions about the implementation of these policies would only affect damages, not class certification, the Court stated.

Takeaways for Employers

This case marks a fundamental shift in the ability of employees to bring derivative claims for violations of sections 203 and 226, based solely on unpaid meal and rest period premiums. These derivative claims often are substantial and may be the "tail that wags the dog" in litigation. Employers should review and revise, if necessary, their timekeeping and payment policies and procedures for compliance.

This case also addresses an uncommon area of wage and hour litigation: the application of ODMPAs. As stated by the Court of Appeal, ODMPAs are a narrow exception to the traditional wage and hour rules. Therefore, courts will carefully scrutinize an employer's compliance with the technical requirements for an ODMPA. In this case, the Court of Appeal was not persuaded by Spectrum's "substantial compliance." Employers who rely on an ODMPA should revisit their policies to ensure strict compliance.

Please contact a Jackson Lewis attorney with any questions about this case or other workplace developments.

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