Insights: Alerts

California Justices Say Overtime Rules Apply To Missed Meal Breaks

July 20, 2021

Written by **Susan W. Pangborn, James Smith** and **Kendra C. Chapman**

On Thursday, July 15, 2021, the California Supreme Court issued an opinion with respect to meal period premiums, impacting employers who provide nondiscretionary payments for work performed by their employees. In *Ferra v. Loews Hollywood Hotel, LLC* (Case No. S259172), the Court held that meal period premiums must take into account nondiscretionary payments, like bonuses, when determining the "regular rate of compensation" with respect to meal and rest period premiums.

In general, California non-exempt employees may not work more than a period of five hours without being provided an uninterrupted meal period of at least 30 minutes. If the total work period is more than 10 hours, a second unpaid period of at least 30 minutes must be provided. An employee may waive their first meal period if six hours completes the workday. Similarly, an employee may waive their second meal period where the first meal period has not been waived and where the employee works no more than 12 hours. In addition to meal breaks, employers are required to provide rest breaks of at least 10 minutes for every three and half hours worked. Unlike meal breaks, an employee cannot waive their rest breaks.

When an employee is unable to take their legally required meal break or rest breaks, employers must pay the employee a premium. Labor Code section 226.7(c) requires employers to pay one hour of pay to employees "at the employee's regular rate of compensation for each workday that meal or rest recovery or recovery period is not provided." Before the California Supreme Court's decision in *Ferra v. Loews Hollywood Hotel, LLC*, the general consensus between the lower courts and employers was that the premium for a missed meal or rest breaks was one hour of pay at the employee's hourly rate. However, the Court's decision in *Ferra* held that because Labor Code section 226.7(c) references an employee's "regular rate of compensation," meal and rest period premiums must also take into account all forms of nondiscretionary compensation earned by employees, not just the hourly wage. Based on the Supreme Court's reasoning in *Ferra*, any payments that go into an employer's calculation of the "regular rate" for overtime purposes, such as shift differentials earned for some hours worked in a workweek, should be included in the rate at which meal or rest break premiums are paid.

Importantly, the Court further held that its decision would apply retroactively. The statute of limitations for claims for underpaid meal and rest break premiums is three years—or four years if a claim for violation of California's Unfair Competition Law is also alleged. Further, claims under the Private Attorneys General Act have a statute of limitation period of one year. Should employers provide their employees non-discretionary payments such as bonuses or shift differentials, they should immediately review their payroll practices with respect to meal and rest break premiums and seek the advice of counsel.

Related People

Susan W. Pangborn

t 404.815.6305

spangborn@ktslaw.com

James Smith

t 415.273.4317

james.smith@ktslaw.com

Kendra C. Chapman

t 415.273.4386

kchapman@ktslaw.com