

California Supreme Court Opines on Rounding Meal Period Time and Associated Penalties

In *Donohue v. AMN Services, LLC*, the California Supreme Court held that (1) employers cannot round time punches in the meal period context and (2) time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations.¹

Background

The employer's policy provided employees with an uninterrupted 30-minute meal period beginning no later than the end of the fifth hour of work. The employer used an electronic timekeeping system to track its employees' compensable time, and employees punched in and out at the beginning of the day, at the beginning of lunch, at the end of lunch, and at the end of the day. The timekeeping system rounded the time punches to the nearest 10-minute increment. When an employee recorded a missed, short, or delayed meal period, a dropdown menu prompted the employee to choose one of three options, including whether they were provided a complaint meal period but chose to work. The employer relied on the rounded time punches generated by the timekeeping system to determine whether a meal period was short, delayed or missed and paid premium pay when due to the employer's noncompliance.

The plaintiff filed a class action lawsuit against the employer for various wage and hour violations including the meal period claim. The court certified a class of non-exempt employees with respect to the meal period claim, and the parties moved for cross-summary judgment on the meal period claim. The trial court granted the employer's motion for summary judgment on the meal period claim, and the appellate court affirmed.

Employers Cannot Round Time Punches in The Meal Period Context

California law generally requires employers to provide employees with a "meal period of not less than 30 minutes" that begins no later than the end of the fifth hour of work and another 30-minute meal period that begins no later than the end of the tenth hour of work. (Lab. Code § 512(a); Industrial Welfare Commission wage order No. 4-2001, § 11(A)). If the employer does not provide an employee with a compliant meal period, then the "employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal . . . period is not provided." (Lab. Code. § 226.7(c); Wage Order No. 4, § 11(B)).

The California Supreme Court held that employers cannot engage in the practice of rounding time punches (i.e., adjusting the hours that an employee has actually worked to the nearest preset increment) in the meal period context. The Court reasoned meal period provisions are intended to prevent even minor infringements on meal period requirements, and rounding is incompatible with this purpose.

¹ The case is *Kennedy Donohue v. AMN Services, LLC*, (Cal., Feb. 25, 2021) No. S253677, 2021 WL 728871, --- P.3d -- (Liu, J.) ("Donohue").

Labor Code section 512 and the applicable wage order sets precise time requirements for meal periods, which speak directly to the calculation of time for meal period purposes. In particular, the time requirements of “not less than 30 minutes” and “more than five hours per day” is at odds with the imprecise calculations that rounding involves. Further, the regulatory scheme that encompasses the meal period provision is concerned with small amounts of time, and the potential incursion that might result from rounding is significant, particularly given the relatively short length of a 30-minute meal period.

The Court also reasoned the premium pay structure under Labor Code section 226.7 and the applicable wage order further support the conclusion that rounding is inappropriate for meal periods. 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. The rationale underlying this premium is that even relatively minor infringements on meal periods can cause substantial burdens to the employee. “A premium pay scheme that discourages employers from infringing on meal periods by even a few minutes cannot be reconciled with a policy that counts those minutes as negligible rounding errors.”

The Court also cited legislative history to differentiate meal periods—and the concern with ensuring health and welfare of employees—from the purposes of calculating wages. “For purposes of calculating wages, counting slightly fewer minutes one day can be made up by counting a few more minutes another day. But the same is not true for meal periods. Under the applicable statute and wage order, a shorter or delayed meal period one day cannot be offset by a longer or earlier meal period another day.” Further, rounding in the meal period context is inconsistent with the remedial purpose of the Labor Code and wage orders and with promoting strict adherence to the safeguards for employee well-being that meal periods are intended to provide.

Finally, the Court assumed without deciding the validity of the rounding standard articulated in *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889 (*See’s Candy I*)—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. However, the Court found that a rounding policy in the meal period context does not comport with this neutrality standard because there is an asymmetry between the treatment of rounded-up minutes (i.e. time not worked that is compensated with regular pay) and the treatment of rounded-down minutes (i.e., time worked that may trigger premium pay). While rounding may account for extra minutes of work time and trigger regular pay, it never provides employees with premium pay when such pay is not owed, and it does not always trigger premium pay when such pay is owed.

Time Records Showing Non-Compliant Meal Periods Raise a Rebuttable Presumption of Meal Period Violations Including at Summary Judgment

The Court adopted Justice Werdegar’s discussion of the rebuttable presumption in her concurrence in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 and held that time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.

Justice Werdegar’s concurrence recognized that employers have both an obligation to relieve their employees for meal periods and to record having done so. If the employer’s records show no meal

period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided.

Adopting this discussion, the California Supreme Court held an employer's assertion that an employee waived a meal period is not an element that a plaintiff must disprove as part of the plaintiff's case in chief—rather, it is an affirmative defense, and the burden is on the employer to plead and prove an employee's waiver of a meal period. The Court further clarified that this presumption goes to the question of liability, applies at the summary judgment stage, and applies to records showing missed meal periods as well as short or delayed meal periods.

The rebuttable presumption is based on the employer's duty to maintain accurate records of meal periods. At the summary judgment stage, if time records show missed, short, or delayed meal periods with no indication of proper compensation, then a rebuttable presumption arises. Employers can rebut the presumption by presenting evidence that employees were compensated for noncompliant meal periods or that employees had in fact been provided compliant meal periods during which they chose to work.

Finally, the Court reiterated the rules set forth in *Brinker*. However, if time records show noncompliant meal periods, then a rebuttable presumption of liability arises. This presumption applies at the summary judgment stage, and the employer may rebut the presumption with evidence of bona fide relief from duty or proper compensation.

Practical Takeaways

There's no "give or take a few" minutes when it comes to meal periods in California. In light of this decision, employers should evaluate their timekeeping policies and practices to ensure they do not round meal period time punches. Employers should also ensure that they maintain accurate records of meal periods. In the event time records show missed, short, or delayed meal periods, employers now have the burden to rebut a presumption of a meal period violation by showing evidence of bona fide relief from duty or proper compensation. Notably, the Supreme Court found the employer's timekeeping system, which included a dropdown menu for employees to indicate whether they were provided a compliant meal period but chose to work and then triggered premium pay for any missed, short, or delayed meal periods due to the employer's noncompliance, would have ensured accurate tracking of meal period but for rounding.