CARLTON FIELDS

California Supreme Court Prohibits Rounding Meal Break Time

March 01, 2021

In determining lunch hours, every minute counts, at least here in California. The practice of "rounding time" to the nearest five or ten minutes can cost employers dearly — literally in the millions. The California Supreme Court has once again decided that the state's wage and hour rules do not follow federal rules. While federal law allows employers to "round" time rather than be precise to the minute, the California Supreme Court rejected that concept, at least for lunch hours here in the Golden State, reversing a lower state appellate court and holding:

- California employers **may not round time for meal breaks**; and
- At the summary judgment stage, a plaintiff's presentation of time records showing noncompliant meal breaks gives rise to a "rebuttable presumption" of liability.

California has unique and detailed requirements on the timing and duration of meal breaks, and if a meal period is denied, shortened, or untimely, the employer must pay a "premium" of one hour of pay at the employee's regular rate. Emphasizing the health and safety aspects of meal breaks, the Supreme Court explained that the rules are "concerned with small amounts of time" and thus "[s]mall rounding errors can amount to a significant infringement on an employee's right to a 30-minute meal period." Accordingly, "[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."

In its decision in *Donohue v. AMN Services LLC*, the court dismissed the employer's argument that its rounding practice was neutral, working both in favor and against the employer, and refused to consider that in fact the rounding had resulted in a net overpayment to the class. The court explained that the issue is not whether the rounding policy compensated employees for time worked

but rather "whether [the employer's] rounding policy resulted in the proper payment of premium wages for meal period violations."

Next, the court analyzed the parties' respective burdens on summary judgment, concluding that "[i]f 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." Such evidence could include "'[r]epresentative testimony, surveys, and statistical analysis.'"

The employer argued this approach would result in "automatic liability" and require employers to police employees during meal breaks. The court dismissed these arguments as well. Emphasizing the employer's duty to maintain accurate time records, the court stated:

> 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. The employer is not required to police meal periods to make sure no work is performed. Instead, the employer's duty is to ensure that it provides the employee with bona fide relief from duty and that this is accurately reflected in the employer's time records. Otherwise, the employer must pay the employee premium wages for any noncompliant meal period.

Although the issue in *Donohue* involved meal breaks, the court indicated that its holding applies to mandatory 10-minute rest breaks as well. And conspicuously, the court merely "assum[ed] the validity" of the leading California case regarding the propriety of rounding generally, leaving open the possibility that the court might have more to say on this issue in the future. Indeed, the court repeatedly cited *Troester v. Starbucks Corp.*, which held that California law has not incorporated the Fair Labor Standards Act's de minimis rule that some time clock issues are not important, instead observing, as it had in *Troester*, that "technological advances may help employers to track time more precisely, and 'employers are in a better position than employees to devise alternatives.'"

Thus, this anti-rounding decision by the California Supreme Court may be a harbinger of things to come.

Of note, the employer in *Donohue* tried to avoid liability by having the electronic timekeeping system prompt employees to enter reasons for missed, short, or late breaks. However, the prompt was based on rounded — not actual — time punches, so the system did not capture all noncompliant breaks. The court therefore ruled that the employer could not rely on this evidence to show there were no meal break violations. Because of the system's failure to prompt for all noncompliant breaks, the value of periodic certifications employees signed stating that they had received breaks was diminished as well.

California employers should ensure that any rounding time policies are compliant with California law and that they are not rounding meal and rest break time at all. And stay tuned for future developments. Also carefully review your timekeeping systems to ensure they are compliant with these new California standards. Round no more.

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