



Missed Meal, Rest Periods Can Cost Employers



By Kelli M. Kennaday, Esq

The author is a partner in the law firm of Wilke, Fleury, Hoffelt, Gould & Birney, LLP, and provides representation and advice to employers on issues such as discrimination, harassment and retaliation claims, as well as wage and hour laws.

SEVERAL HIGH-PROFILE class action lawsuits have been settled recently, with employers agreeing to pay millions to employees for missed meal and rest breaks. Generally, these types of class action lawsuits seek compensation for all affected employees for a four year period preceding the date the lawsuit is filed. To avoid a similar fate, it is important to understand and consistently apply the rules regarding meal and rest breaks.

Rest Periods

In California, non-exempt employees (*i.e.*, not management) must be given a 10 minute rest period for every four hours of work. The rest period is to be taken in the middle of each four hour work period as far as is practical. A rest period need not be provided for employees whose total daily hours of work are less than 3.5 hours.

The 10 minute rest periods are considered time worked and must be paid. The employee may not be required to perform any work during a rest period. The rest periods may not be waived.

If the employer fails to provide the rest period, the employer must pay the employee one additional hour of pay at the employee's regular rate for each work day where a rest period is not provided. Although an employee is not required to take his or her rest period, the employer must "authorize and permit" the rest period. Failing to take into the account the need for rest periods when scheduling and assigning tasks may be deemed a failure to permit the rest period.

Meal Periods

Non-exempt employees who work more than five hours per day must be provided with a meal period of not less than 30 minutes. The meal period must begin before the end of the fifth hour of work. If the employee works more than five hours per day, but less than six hours per day, the meal period can be waived by mutual consent.

If the employee works more than 10 hours in a given day, a second meal period of not less than 30 minutes must be given. If the hours worked are more than 10 hours per day, but less than 12 hours, the second meal period can be waived by mutual consent only if the first meal period was not waived. If the employer fails to provide the meal period, the employer must pay the employee an additional hour of pay at the employee's regular rate.

However, in contrast to rest breaks, employers have an affirmative obligation to ensure that meal periods are taken as required and to keep proper records with respect to each employee. Accordingly, it is important that you require your employees to sign in and out for their meal breaks.

The meal period may be unpaid unless the employee is not relieved of all duties. An on-duty (paid) meal period may be permitted only when the nature of the work prevents the employee from being relieved of all duty and when there is a written agreement between the employer and the employee for an on-duty meal period. If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must also be paid.

Protecting Yourself

Given the risk associated with claims for missed meal and rest periods, many employers are now proactively addressing this issue. There are several things you might want to consider to protect against claims for missed meal and rest periods.

First, you should include provisions in your Employee Handbook regarding meal and rest periods, informing your employees in writing that such breaks must be taken.

Second, you may want to include a stand-alone acknowledgement form, similar to your at-will acknowledgement form, in which employees certify that they have read and understand the company's meal and rest period policies and that they agree to abide by those policies and take all required meal and rest periods.

Finally, you may wish to include a statement on your employees' time sheets, which the employee signs, certifying that they have worked all hours indicated and that they have taken all required meal and rest breaks for each day worked. While none of these methods guarantees you will not face a missed meal or rest period claim, they will provide you with the best defense possible should such a claim arise.

kkennaday@wilkefleury.com

Sierra Sacramento Valley Medical Society
5380 Elvas Avenue #100 • Sacramento, CA 95819
916.452.2671 PH • 916.452.2690 FX • Email: info@ssvms.org

Copyright © 2000-2008 Sierra Sacramento Valley Medical Society - All Right's Reserved