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## **ALERT: California Supreme Court Issues Important Wage-and-Hour Class Action Decision Expanding Recovery for Employees**

In a decision issued April 16, 2007, the California Supreme Court has greatly expanded the amount of money that employees can recover in California if they have not been given proper “meal breaks” and “rest breaks” on the job. *Murphy v. Kenneth Cole Productions, Inc.*, \_\_\_\_ Cal. 4<sup>th</sup> \_\_\_\_ (Case No. S140308) (April 16, 2007).

### **Court Creates an Expanded Period for Employees to Collect Damages**

Under California law, employees who have not been given proper meal breaks or rest breaks are required to be paid “one additional hour of pay,” in addition to their regular pay, for every day that they do not receive the proper breaks. For the past several years, lower courts in California have issued conflicting decisions as to whether this “one additional hour of pay” should be termed a “*penalty*” payment to the employee, or an additional “*wage*” payment to the employee.

The distinction whether this payment is a “*penalty*” or a “*wage*” has an important practical difference. If the payment to the employee is a “*penalty*,” then the employee is only entitled to a *one*-year statute of limitations (that is, the employee would only be able to recover one year’s worth of these payments). On the other hand, if this payment is a “*wage*,” then the employee is entitled to a *three*-year statute of limitations (that is, the employee would be entitled to recover three years of these payments). According to some estimates, there are in excess of \$100 million at stake in wage-and-hour cases pending across the state, where the controlling issue is whether the one-year statute or three-year statute would apply.

A number of lower courts in California had already examined the issue of “*wage*” versus “*penalty*,” and had concluded that this payment was a “*penalty*” (that is, that a one-year statute would apply). Only one lower court had concluded that the payment was a “*wage*,” and that a three-year statute would apply.

## **Court Decision Surprised Many Observers**

The California Supreme Court, in a unanimous 7-0 decision, surprised many observers by concluding that this payment was indeed a “wage” and that the three-year statute of limitations would apply.

The Court examined the history of the legislation enacting this payment and noted that there had been a separate penalty provision in earlier versions of the legislation. The Court then observed that this separate penalty provision had been deleted from the legislation. The Court reasoned that this course of events indicated that the one-hour’s payment was intended to be treated as a “wage,” and not as a “penalty.” The Court recognized as well that the statutory language itself (“one additional hour of pay”) also supported its conclusion that this “one additional hour of pay” was intended to be a “wage” and not a “penalty.” Unfortunately for the employer in this matter, the Court chose to simply ignore a number of other arguments that the employer raised in their briefs and arguments before the Court.

## **What Employers Can Do To Reduce the Risk of Paying These Expanded Damages**

The Court’s decision reinforces the need for California employers to take extra precautions to ensure that all non-exempt employees (that is, employees who receive overtime pay) in fact do take the mandatory meal break, and are given an opportunity to take the rest breaks.

Under California law, the rules regarding these mandatory meal breaks are complex. Stated simply, the rules require that almost all non-exempt employees cannot work longer than five hours without a “duty-free” meal break which is at least 30 minutes long (limited exceptions do exist). This 30-minute meal break generally cannot be waived by the employee (again, except under limited circumstances). Additional mandatory meal breaks can be required for longer shifts or periods of work.

Regarding rest breaks, the rules are simpler – employees must be given the opportunity to take a “duty-free,” 10-minute rest break for every four-hour period that they work. Employees may decide not to take a rest break, but it must be entirely their own decision, not under pressure by the employer.

The issue for employers in California is that, from a practical point of view, it may be up to the *company* to disprove an employee’s claim that the employee regularly “did not get a meal break.” That is, unless the *company* can affirmatively prove that the employee did indeed have a meal break, the company may be required to pay this extra hour of pay for every day that the employee did not take a mandatory meal break. This problem of proving that the employee did take a meal break is now made much more difficult because the employee can now make claims that are up to three years old.

We strongly recommend that companies with employees in California review their policies regarding meal breaks and rest breaks in California. We recommend that companies institute a robust “clock-in/clock-out” procedure for meal breaks, and that they put in place a training program so that employees understand the rules in this area, and that managers be instructed to enforce the rules that employees actually take their mandatory meal break. Similarly, we recommend that written policies and training sessions make clear that employees are entitled to rest breaks.

This potential problem of meal breaks and rest breaks is magnified because of California's unusual definitions of *exempt* and *non-exempt* employees. For example, if an employee is currently being treated as *exempt*, and is on a salary, that employee typically is not asked to "clock-in and clock-out" for lunch. The danger to employers is that if, at a later point, that employee files a wage claim, and it turns out that the employee is in fact *non-exempt*, that employee can now claim up to three years of statutory payments based on an assertion that the employee "did not receive meal breaks."

These unusual California definitions are a further reason why employers would benefit from a careful review of the exempt/non-exempt status of their California employees, and the implementation of strict meal break and rest break rules.

## **Factual Setting of Case**

The factual setting of the employee's claim in the *Murphy* case is typical of many of these types of claims. The employee was a well-paid manager of a retail store. Under federal rules as applied in states outside of California, store managers such as this employee are typically *exempt*, and would not be covered by the mandatory meal break and rest break rules. In fact, as store manager, it was this employee's responsibility to make sure that employees were actually taking their proper meal breaks and rest breaks.

However, under California's unusual definition of exempt versus non-exempt status, this store manager position was viewed as *non-exempt*, and he was therefore entitled to California's meal breaks and rest breaks, and was entitled to the statutory payment for failure to formally receive these breaks.

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If you have any questions regarding the *Murphy* decision or similar decisions, please contact Angel Gomez in Los Angeles at 310/557-9521, [agomez@ebglaw.com](mailto:agomez@ebglaw.com).

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