

MISSED MEAL AND BREAK PENALTIES - COURT RULES DOUBLE PAYMENT

On February 16, 2011 the California Court of Appeal issued a ruling that is going to significantly increase the number of meal and break lawsuits and will make settlement of these claims more expensive!

California law provides an employee is entitled to be paid one additional hour of wages as a penalty for every meal period not taken or rest break denied. But a question has remained -- How many penalties per day could be assessed? Could an employee recover a penalty payment for a missed meal break AND another penalty for one or two missed rest breaks ?

Previously the argument was that an employer is only obligated to pay a maximum of one premium payment per work day regardless of the number of alleged violations occurring on a work day. This has now changed. In *Marlo v. United Parcel Service, Inc.*, the court ruled that Labor Code §226.7 permits an employee to recover up to two premium payments per work day: one for failure to provide a meal period and another for failure to provide a rest period.

The court's relied upon the fact that the Wage Orders contained separate sections for meal and rest breaks and that each section contained the language for the penalty payment. The court reasoned that permitting the recovery of two premium payments would be a consistent application of the Labor Code and the Wage Orders. The court further stated that allowing recovery of two premium payments per work day would further provide "an incentive to employers to comply with labor standards and compensate employees when those standards are violated."

It is possible that this ruling will be appealed but in the meantime, employers should be prepared for new litigation and increased penalty claims.

What Should You Do?

Now, more than ever, be vigilant about ensuring that employees take their full 30 minute duty free meal period. (The DLSE considers any meal break less than 30 minutes is a violation).

Ensure that employees are provided a 10 minute rest break for each 4 hours of work.

Ensure that employee time records show the 30 minute meal period.

Ensure that the meal period is taken by the start of the 5th hour of work.

Ensure that employees do not work during the meal period; if work occurs, employees must be paid for the time worked and the one hour penalty payment. Payment of the penalty must occur in the pay period in which the violation occurred.

