



Client Alerts

Meal Period and Rest Break Compliance for California Employers

December 05, 2024 | (Time to read: 4 minutes)

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California's complex employment laws are filled with pitfalls for even the best-intentioned employer. The availability of both class actions and Private Attorneys General Act procedures (PAGA) gives the plaintiffs' bar powerful tools to use against employers. Every week, the local legal paper reports multiple costly settlements of wage and hour claims. In our experience, meal/rest break issues are among the most common predicates for class/PAGA claims and expensive to resolve. Documenting compliance concerning mandatory breaks is well worth employers' efforts.

Meal Breaks

California law requires that all nonexempt employees be provided an unpaid, minimum 30-minute uninterrupted meal break starting no later than the end of the 5th hour of work (and a second meal period if the employee works more than ten hours in a day). Failing to provide the necessary meal break requires the employer to pay as a penalty/premium an additional one hour's pay at the employee's regular rate. To prove compliance, in addition to start/stop times for the daily work shift, employers also are required to record to the nearest minute beginning and ending times of meal breaks.

Rest Breaks

The law likewise requires that all nonexempt employees be provided uninterrupted paid rest breaks of at least 10 minutes for every four-hour work period or major fraction thereof. Unlike meal breaks, however, the start/stop times of rest breaks need not be recorded. Employees who are not provided required rest breaks likewise must be paid an additional hour's pay as a penalty/premium.

"Providing" Breaks

"Providing" a meal or rest break does not mean employers must force employees to take their breaks. In general, employers must give employees the opportunity to take breaks and refrain from behavior tending to prevent or interfere with those breaks. But the devil is in the details. When an employee's legally-required time records show no meal break taken on some days, or breaks of less than 30 minutes, or that start "late," there is legal risk. In that case the employer typically bears the burden of proving that the employee voluntarily chose not to take a compliant break. That can be difficult to prove, especially since claims theoretically can date back as much as four years, or even more. It is especially challenging (and potentially expensive) when no missed meal period premium of an hour's wages was paid.

Mitigating Risks

Employers can reduce these risks. A comprehensive, compliant, and diligently implemented meal/rest break policy is essential. Thorough recordkeeping also is critical.

Some suggestions for employers to consider:

- An updated written break policy focused on full compliance and risk reduction is important. The policy could include:
 - Specific instructions that employees are to take their breaks, are charged with accurately recording their work hours, including the start/stop times for meal breaks, and are responsible for letting HR or a designated person know if they need to make any adjustments to their recorded work hours.
 - Confirming directions to that effect to supervisors/managers.
 - A firm direction that employees notify HR or other designated person any time they are denied a break, cannot take a break because of work pressures, or have a break interfered with or shortened.
 - A statement that no employee should ever work “off the clock.”
- Nonexempt employees should sign and date a statement (during on-boarding, and periodically thereafter) confirming receipt and review of the policy, including specifically initialing paragraphs with the key elements mentioned above.
- Employees should be directed to sign a certification each pay period that all meal/rest breaks were taken, unless specifically called out by the employee in the certification itself.
- Timekeeping procedures should be reviewed and changes adopted as needed for compliance with legal requirements.
- A review process should be established and used each pay period to identify and review potential failures to comply with meal break requirements. Employers should consider working with their payroll services for that purpose. Meal period premiums should be paid in every instance of noncompliance.
- Where appropriate and feasible, adopting written schedules (retained for the applicable limitations period) of times for employee meal breaks can be helpful.
- The reasons for any missed/short/late meal break should be contemporaneously documented.
- If time records are edited by a manager for any reason (for example, the employee missed a punch, forgot to clock in or out for lunch, etc.), the reasons for the edit should be documented in the time record.
- Meal period premiums should be paid meticulously in every instance when an employee was unable to take a full, compliant meal break or was not provided a rest period.
- Periodic reminders should be circulated to both employees and supervisors/managers reinforcing the importance of the meal and rest break policy and the employer’s expectation of full compliance by everyone.

Of course, the foregoing are suggestions only and not legal advice for any specific situation or employer. Every employer should consult with counsel for recommendations tailored to the employer’s business and operations.

Most employers of any size have had the experience of responding to statutory requests by lawyers representing former employees for production of time and pay records and personnel files. Getting such a request likely means that the employer is already targeted for a potential legal claim. Employers with a properly designed break policy, careful implementation, and complete records have a much better chance of producing records that will deter a lawyer from bringing a claim. That, of course, is the ultimate objective. Although companies often respond to records requests without advice from their counsel, they may benefit from a proactive approach to the response.

Related People

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