

California Workplace Law Blog

Insight & Commentary on California Workplace Law Issues & Developments

No Class Action for Residential Care Facility Employees Over On-Duty Meal Periods

By [Dylan B. Carp](#) and [Mitchell F. Boomer](#) on December 10, 2015

Denying class certification in an action for alleged meal period violations under the California Labor Code and Industrial Welfare Commission Wage Order No. 5-2001 (“Wage Order 5”), the California Court of Appeal ruled that a 24-hour residential care facility for developmentally disabled individuals did not have a policy that violated wage and hour laws common to the class members. *Palacio v. Jan & Gail’s Care Homes, Inc.* Specifically, the Court ruled that the residential care facility did not need to inform employees whom it required to waive their right to uninterrupted meal periods and eat their meals with the residents under Section 11(E) of Wage Order 5, that the employees could revoke the waiver at any time under Section 11(A).

Background

Yvonne Palacio worked for Jon & Gail’s Care Homes, Inc. (“Care Homes”), a 24-hour residential care facility for developmentally disabled individuals. Under California law, a residential care facility’s on-duty direct care staff must provide 24-hour care to clients to protect them from illness, injury, fire, and other emergencies. Consequently, Care Homes required Palacio and other direct care employees to work on-duty meal periods and required them to sign an agreement waiving their right to an uninterrupted meal period in accordance with Section 11(E) of Wage Order 5.

Palacio filed a class action against Care Homes and alleged that its policy of requiring employees to waive their right to an uninterrupted meal period violated the Labor Code and Wage Order 5 because Care Homes failed to inform employees that they also had the right to revoke their waiver at any time, in accordance with Section 11(A).

Wage Order 5

Under Section 11(E) of Wage Order 5, a residential care facility’s employees may be required to work on-duty meal periods without penalty, provided the following conditions are met: (1) it is necessary to meet regulatory or

approved program standards; (2) the employee eats with residents during residents' meals; and, (3) the employer provides the same meal to the employee at no charge. By contrast, Section 11(A) of Wage Order No. 5 allows an employee in certain circumstances to enter into an agreement for an on-duty meal period; provided that the employee can revoke the agreement at any time.

Appeal Denied

Palacio did not dispute that Care Homes complied with Section 11(E) of Wage Order 5; rather, she maintained that Care Homes also was required to inform employees that they had the right to revoke their waiver under Section 11(A). By failing to do so, Care Homes had a general policy that violated wage and hour laws common among class members, making class certification appropriate. The Court rejected Palacio's argument.

Applying principles of statutory construction, the Court noted that nothing in Section 11(E) suggested that it was meant to be read in conjunction with Section 11(A). To the contrary, the two provisions were irreconcilable. The Court found that it would be inconsistent to allow an employer to require an employee to work on-duty meal periods under Section 11(E), yet permit the employee to revoke that requirement at any time under Section 11(A). Such an interpretation would render the word "require" in Section 11(E) meaningless.

In addition, the Court recognized that Palacio's interpretation of Wage Order 5 would place Care Homes and other residential care facilities in a "precarious state." If employees were permitted to revoke the on-duty meal period requirement at any time, employers would need to alter scheduling practices to allow the employee to do so, while ensuring continuous care for the residents. The Court noted that, even if such an arrangement were feasible, it could not have been what the IWC intended because Section 11(E) permits employees to take off-duty meal periods upon 30 days' notice to the employer, without revoking the on-duty meal period requirement. Thus, the Court concluded that Care Home was not obligated to comply with Section 11(A) and affirmed the denial of class certification.

* * *

This case reminds employers of the need to understand and comply fully with California's requirements regarding on-duty meal periods and meal period waivers. Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments.

