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California Court Decision on Meal Breaks May Cause Health Care Industry To Go To Code Blue

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Executive Summary: A new California Court of Appeal decision has invalidated a 22-year-old healthcare industry exception that had given the industry some flexibility with respect to how it provided its employees working extra-long shifts with meal breaks. The decision is expected to have serious and immediate ramifications for employers in the patient care industry not only because of its invalidation of a long-standing exception but also because of its retroactive effect on previously existing practices.

Generally, employers operating in California must provide any employee working more than ten hours in a day with two meal breaks. While a second meal break can be waived if the shift lasts twelve hours or less, the rules generally prohibit waivers when the employee works more than twelve hours. Since 1993, however, an exception has existed for employers in the healthcare industry, which allowed their workers to waive the second meal break, even on these extra-long shifts. The exception provided mutual benefits for both the industry and its employees: it provided employers with much-needed flexibility regarding California's stringent meal break requirements given the high number of nurses and other patient care employees in the industry working 12-hour shifts; it gave employees the continued opportunity to work flexible hours while at the same time earning higher amounts through overtime. On February 10, 2015, however, a California appeals court held that exception to be invalid. The case is *Gerard v. Orange Coast Memorial Medical Center*, G048039, in the Court of Appeal of the State of California, Fourth Appellate District.

What Happened?

The case involved three healthcare workers who sued a hospital for meal break violations, claiming, in part, that the hospital improperly had them waive their second meal break whenever they worked periods longer than twelve hours. The hospital opposed the plaintiffs' argument, citing the healthcare exception. The lower court ultimately granted summary judgment in the hospital's favor and denied the workers' motion for class certification, citing the healthcare exception. The California Court of Appeal reversed.

In order to understand how the appellate court came to this conclusion, one must first understand the complex statutory scheme governing employees' meal breaks in California. While California prescribes a general meal break standard applicable for most employers through the state's Labor Code (with limited exceptions), it also maintains a set of 17 industry/occupational wage orders, also designed, in part, to regulate meal breaks for each industry or occupation that each respective wage order covers. In a nutshell, meal breaks are governed by two complementary – and in this case overlapping – sources of authority: the provisions of the California Labor Code, enacted by the state Legislature; and the wage orders, adopted by the Industrial Wage Commission (IWC), an administrative body which has since been de-funded and is no longer active. The healthcare exception, originally adopted in 1993, is found in two of those wage orders.

So if the healthcare exception is found in the wage orders, then it's okay to follow them, right? Not so, according to *Gerard* court. In reaching its conclusion, the court examined the intricate and sometime convoluted history behind these two sources of authority. The court found that when the State Legislature enacted the meal break statute, it also repealed five of the wage orders, including the wage orders that contained the healthcare exception, and required the IWC to review and readopt its orders to conform to the State Legislature's expressed intentions. Additionally, it also enacted a statute that prohibited the IWC from enacting any standards that conflicted with the State Legislature's meal break statute. Despite this limitation, the IWC readopted wage orders that continued to include the healthcare exception. Based on these facts, the *Gerard* court found that the IWC exceeded its authority when it readopted the healthcare exception.

I Only Need to Worry About This Going Forward, Right?

Wrong. In a surprising turn, the *Gerard* court went on to say that because employers have been on clear notice – implicitly concluding that the healthcare industry had known that the healthcare exception was invalid – that they were required to provide health care workers with a second meal period on extra-long shifts, the plaintiffs were entitled to seek the penalty prescribed by the State Legislature for any failure by the hospital in the past to provide a second meal period, despite its reliance on the healthcare exception.

Under California law, a failure to provide meal breaks requires an employer to pay an employee one additional hour of pay for each shift in which a meal break was not provided. Employees can recover these penalties going back four years. California further compounds these penalties by permitting employees to seek additional penalties prescribed by the Labor Code, including waiting time penalties, wage statement penalties and penalties under the Private Attorneys' General Act.

So What Should I Do Now?

Because of the retroactive impact of the *Gerard* court's decision, any healthcare industry employer who currently permits its employees to waive their second meal break on shifts greater than twelve hours must ***immediately*** change its policies. The decision also serves as a stark example of California's often complicated wage and hour regulatory scheme.

If you have any questions regarding this Alert or other labor or employment issues affecting California employers, please contact the author, David Cheng, dcheng@fordharrison.com, who is a senior associate in our Los Angeles office. You may also contact the FordHarrison attorney with whom you usually work.
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