



# World of Employment

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## California Supreme Court Prohibits Employers from Implementing “On-Call” Rest Breaks



By **Bryan Hawkins** on December 28, 2016

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In *Jennifer Augustus v. ABM Security Services, Inc.*, the California Supreme Court determined that employers are prohibited from implementing “on-call” rest breaks. This holding led the Supreme Court to reinstate an approximately \$90 million judgment against the defendant employer.

The plaintiff in *Augustus* worked as a security guard for defendant. Plaintiff’s lawsuit alleged that defendant’s policy of requiring security guards to carry radios during their rest breaks in order to respond to emergencies violated California law requiring employers to provide employees with uninterrupted rest periods. The superior court ruled in favor of plaintiff and awarded her and the class approximately \$90 million in statutory damages, interest, and penalties.

The employer appealed and the Court of Appeal reversed the superior court’s decision. While the appellate court agreed that the employer did not relieve its employees of all duties during rest periods and required them to remain on-call, it concluded that California law did not require employers to provide off-duty rest periods and that being on-call did not constitute performing work.

The Supreme Court began its discussion by noting that California law does not explicitly prohibit on-call rest periods. It then reviewed the history of California’s rest and meal period break laws, as well as the purposes of California’s labor laws. At the conclusion of this discussion, the Supreme Court reversed the Court of Appeal’s decision and reinstated the superior court’s decision and \$90 million judgment. According to the Supreme Court, California law prohibits on-duty and on-call rest periods and mandates that rest periods be off-duty. The Court also determined that requiring plaintiff to carry a radio in the event of an emergency violated this principle, even though there was no evidence of the extent to which the security guards actually received calls that interrupted their rest breaks.

*Augustus* confirms the California Supreme Court’s hypersensitivity to the protection of employee rights and makes clear that, to the extent there was ever any question, employers must relieve employees of all work and responsibilities in order to comply with California law. Almost as important, however, *Augustus* demonstrates the severe risk that employers face in not remaining vigilant in ensuring that their policies comply with California law, even when that law is not explicitly stated.

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