

Employment & Labor Law Alert

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California Supreme Court: Missed Meal and Rest Break 'Regular Rate of Pay' Includes All Nondiscretionary Compensation

The California Supreme Court has ruled that when employers pay employees for missed meal and rest breaks, the pay rate required by the California Labor Code must be calculated using not only the employees' base hourly rate but also a proportionate share of nondiscretionary payments, just as in the case of calculating the regular rate of pay for overtime purposes. Employers of all sizes, from large companies to households employing caretakers or other staff, must comply with the ruling, which the court said applies retroactively.

California's Labor Code Requirements for Meal and Rest Breaks

California law requires that all employers must either provide employees with meal and rest breaks or pay them an additional hour of pay at the employees' "regular rate of compensation."

At issue in *Ferra v. Loews Hollywood Hotel LLC* was what the term as used in the Labor Code means — an employee's base hourly rate (as the employer argued) or "regular rate of pay" under the code's overtime provisions (as the bartender employee argued), which includes both the employee's hourly wage and any nondiscretionary payments such as earned or performance bonuses and commissions.



The trial court agreed with the hotel that the pay rate should be based only on the employee's base hourly rate, and the Court of Appeal agreed. In a unanimous decision, the California Supreme Court reversed, however, finding that both of the Labor Code sections covering overtime pay and pay for missed meal and rest breaks use the term "regular rate," which the legislature meant to include a proportionate share of nondiscretionary payments in addition to hourly wages.

Retroactive Application

The court also concluded that its ruling on calculating the required rate applies retroactively, rejecting the hotel's argument that it would cost employers millions to recalculate previous payments.

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What Employers Should Do Now

Employers should review their policies and procedures to ensure payments for missed meal and rest breaks are correctly calculated to include nondiscretionary earnings. Because the ruling is retroactive, employers should also determine whether past payment practices have been compliant. The requisite review of past payments should cover the past three years.

Related Professionals

Michelle La Mar mlamar@loeb.com
Sarina Saluja ssaluja@loeb.com

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