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Freeland Cooper & Foreman LLP

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Health Care

The U.S. Supreme Court recently held hearings on the constitutionality of the health care reform law, and it's expected to issue a ruling this summer. In the meantime, the law is still in effect. At www.HRhero.com, you can find the following tools to help ensure your workplace is in compliance with the law:

- HR Sample Policy — Eligibility for Benefits, www.HRhero.com/lc/policies/513.html
- HR Sample Policy — Health and Welfare Benefits, www.HRhero.com/lc/policies/514.html

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ATTORNEYS' FEES

Supreme court bans fee awards on meal and rest break claims

by Michael Futterman and Jaime Touchstone

In its second recent decision concerning meal and rest periods, the California Supreme Court ruled that neither aggrieved employees nor meritorious employers are entitled to recover attorneys' fees on claims for missed meal and rest periods. The court explained that the legislature enacted regulations requiring breaks during the workday to protect the health of employees, not to provide wages. Thus, the fee-shifting laws applicable to wage claims don't apply to meal and rest break claims.

Dismissal of employees' lawsuit spurs fee award

Anthony Kirby and Rick Leech, Jr., sued Immoos Fire Protection (IFP) for violating California's labor and unfair competition laws by failing to provide mandatory rest periods, among other things. The employees ultimately dismissed their complaint against IFP, which then requested and was awarded attorneys' fees on their rest period claim. The employees appealed that award.

The court of appeal concluded that the trial court's award of fees was proper because the employees were seeking payment of "additional wages" as compensation for the missed rest periods, and IFP was therefore entitled to recover fees as the prevailing party in a wage claim. The California Supreme

Court granted review and reversed the court of appeal's decision, ruling that a party prevailing on a claim for failure to provide meal or rest breaks isn't entitled to attorneys' fees.

Court defers to laws' plain meaning

The general "default" rule of American law is that each party must bear its own attorneys' fees. The exception to that rule is that a prevailing party may recover attorneys' fees when authorized by statute or contract. The question in this case was whether any statute in the California Labor Code authorizes granting attorneys' fees to the prevailing party on a meal and rest break claim.

Labor Code Section 1194, a *one-way* fee-shifting provision, authorizes an award of attorneys' fees to *employees* who prevail on unpaid minimum wage or overtime claims but disallows *employers* from recovering attorneys' fees when they prevail. In this case, the employees who dismissed their rest period claims argued that Section 1194 should be construed to encompass meal or rest break claims in addition to minimum wage and overtime violations. Under that interpretation, only *employees* could recover attorneys' fees.

The California Supreme Court reviewed the plain text and history of Section 1194, concluded that the legislature

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intended it to apply only to minimum wage and overtime claims, and refused to expand its scope to meal and rest breaks. Thus, Section 1194 doesn't authorize an award of attorneys' fees to either employees or employers who prevail on a meal or rest break claim.

The supreme court next considered whether Labor Code Section 218.5 authorizes an award of attorneys' fees to the prevailing party in meal and rest period litigation. Section 218.5 authorizes the award of fees to a party who prevails in an "action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions."

IFP argued that because an employer that violates California's meal and rest break laws must pay aggrieved employees "one additional hour of pay at [their] regular rate of compensation for each [workday] that the meal or rest period is not provided," a meal or rest break claim constitutes an "action brought for the nonpayment of wages," thus falling within the ambit of Section 218.5. The supreme court disagreed.

The court explained that Section 226.7 (governing meal and rest periods) wasn't enacted to protect or provide employee wages. Instead, the law ensures the health and welfare of employees by requiring that employers provide adequate breaks throughout the workday. When an employee sues for a violation of Section 226.7, he is suing because his employer allegedly required him to work during a meal or rest period, not because the employer failed to pay wages. Even though the payment of wages is the *remedy* for a violation of the obligation to provide meal and rest periods, it's the failure to provide required meal and rest breaks, not the failure to pay wages, that triggers a violation of the law. Accordingly, a Section 226.7 claim cannot serve as the basis for an award of attorneys' fees.

The supreme court found additional support for that conclusion in the history of the relevant statutes, which indicates that the California Legislature had considered adding attorneys' fee language to Section 226.7 but ultimately didn't do so. Furthermore, as a matter of public policy, workers might be deterred from filing meritorious meal and rest period claims because the potential benefit from recovering an "additional hour of pay" may not justify the risk of paying the employer's attorneys' fees if the claims were unsuccessful.

In accordance with the statutory language and legislative history, neither Section 1194 nor Section 218.5 authorizes an award of attorneys' fees to a party prevailing on a meal or rest break claim. Instead, meal and rest break litigation is governed by the "default" American rule that each side must bear its own attorneys' fees. *Kirby v. Immoos Fire Protection, Inc.* (California Supreme Court, 4/30/12).

Bottom line

Class-action wage and hour lawsuits, which frequently include meal and rest break claims, have increased dramatically in recent years. In clarifying that meal and rest break claims do not authorize the recovery of attorneys' fees, the California Supreme Court has effectively made such claims less attractive for class-action litigation. It's unlikely that this decision will significantly reduce the number of class-action lawsuits, but it may make it less likely that those lawsuits will include meal and rest break claims.

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➔ You can catch up on the latest court cases involving meal and rest periods in the subscribers' area of www.HRhero.com, the website for California Employment Law Letter. Just log in and use the HR Answer Engine to search for articles from our 50 Employment Law Letters. Need help? Call customer service at (800) 274-6774. ♣