

California Supreme Court Rejects On-Duty or On-Call Rest Breaks

December 27, 2016

On December 22, 2016, the California Supreme Court addressed two related issues: (i) whether California law requires employers to permit off-duty rest periods – that is, time during which an employee is relieved from all work-related duties and free from employer control, and (ii) can an employer satisfy its obligation to relieve employees from work-related duties and employer control if the employer requires its employees to remain on-call during rest periods.

In *Augustus v. ABM Security Services, Inc.*, No. S224853, the Court concluded that California law prohibits on-duty and on-call rest periods, holding that during required rest periods, employers must "relieve their employees of all duties" and "relinquish any control" over how employees spend their break time – including the obligation that an employee remain on-call during a rest period.

In 2005, approximately 14,000 security guard employees of ABM Security Services, Inc. ("ABM") sued the company in a class action alleging that ABM's policy of requiring its security guards to keep their pagers and radios on during rest periods and to remain "vigilant and responsive to calls" during rest periods violated California's Labor Code and the applicable Industrial Welfare Commission wage order because such requirements deprived the employees of their rights to uninterrupted rest periods. The trial court ruled in favor of the employees and awarded approximately \$90 million in statutory damages, interest and penalties. The Court of Appeal reversed the trial court decision, holding that California law does not require employers to provide off-duty rest periods, and that "simply being on call" does not constitute performing work during a rest period. The security guard employees appealed to the California Supreme Court, which reversed the appellate court decision and reinstated the trial court ruling, concluding that California requires employers to provide their employees with rest periods that are free from work-related duties and employer control ("[a] rest period, in short, must be a period of rest").

Employers with nonexempt employees in California should review their policies in light of this decision to ensure that, during required rest periods, employees are free from all work-related duties and employer control (including any policies requiring employees to remain on-call).

Our lawyers have deep counseling and litigation experience on these issues. If you would like to discuss these issues further or have questions about this alert, please contact one of the lawyers listed here.

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