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Employment and Labor Law Alert

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California Employers Cannot Round Meal Period Punches

Kimberly Lucia, Lissa Oshei

On February 25, 2021, the California Supreme Court ruled in *Donohue v. AMN Services, LLC* that employers cannot round employee time punches for meal periods. Employers who round meal period punches should immediately examine their rounding policies and practices. In addition, the Court held that time records that reflect non-compliant meal periods raise a rebuttable presumption of liability for premium wages. Further, while not expressly holding that an employer could not utilize rounding policies in paying for hours worked, the Court called into question the continuing viability of rounding policies in light of technological advances that permit employers to capture actual hours worked with more precision.

Meal Period Requirements

Under California law, an employer is required to provide a nonexempt employee with a 30-minute meal period that begins before the end of the fifth hour of work, and a second 30-minute meal period that begins before the end of the tenth hour of work. Missed, late, short, or interrupted meal periods can signify a violation of law. Violations trigger an obligation to compensate an employee for 1 hour of pay (premium wages). However, assessing whether a violation occurred hinges on why the meal period does not comply—if an employer provides an opportunity to take a compliant meal period but the employee *voluntarily* causes a non-compliant meal period, then no violation has occurred and no premium wages are owed.

Rounding is Incompatible with California Law

In *Donohue*, the plaintiff filed a wage and hour class action alleging that AMN's policy of rounding meal periods to the nearest 10-minute increment resulted in non-compliant meal periods. The plaintiff also alleged that AMN failed to pay premiums for these non-compliant meal periods.

Under the policy, AMN rounded meal period punches that were between 1 and 10 minutes late or early to the next increment. For example, for an employee who started working at 8:00am and clocked out for a meal period at 12:05pm, AMN rounded that time punch down to 12:00pm. Similarly, if that same employee clocked back in and resumed working at 12:26pm, AMN rounded that punch to 12:30pm. In other words, the employee's 21-minute meal period that

555 Capitol Mall
Suite 1500
Sacramento, CA 95814

Tel / 916.321.4444
Fax / 916.441.7597
BOUTINJONES.COM

actually began after the end of the fifth and lasted fewer than 30 minutes hour of work appeared compliant.

AMN's time keeping system flagged non-compliant meal periods and the employee was required to use a drop-down menu to identify whether a violation occurred. If so, AMN paid a premium. However, the system did not flag rounded meal periods. Because the system did not flag them, AMN did not pay a premium for any short or late meal periods that appeared compliant due to rounding.

AMN defended its practice of rounding meal period punches, invoking state and federal law permitting rounding time punches to calculate hours worked. In that context, rounding policies have generally been accepted, so long as they are neutral. A neutral rounding policy is one that does not result in systematic underpayment of employees' wages for hours worked and, on average, favors neither the employees nor the employer.

The Court sided with the plaintiff and held that AMN's policy of rounding short and/or late meal periods violates California law. The Court determined that AMN's rounding policy was not neutral because AMN never paid a premium for compliant meal periods and failed to pay a premium for some non-compliant meal breaks. Consequently, the policy consistently resulted in underpaid premiums for non-compliant meal periods.

Interestingly, despite the determination that AMN's rounding policy was not neutral, the Court wholesale rejected rounding in the meal period context. Thus, even a neutral rounding policy is prohibited for meal periods. The Court observed that rounding is "at odds" with the precise meal period timing requirements in the Labor Code and wage orders.

In reaching this decision, the Court relied on the policy underlying California's meal period requirements, which were adopted to protect employee health, safety, and well-being. The Court noted that even "minor infringements on meal periods" could burden employees and increase "risks associated with stress or fatigue," particularly for employees performing manual labor. Because a 30-minute meal period is already short, minutes matter. The Court also discussed the strict premium pay scheme, which triggers a premium payment for any violation—no matter how small or technical.

Records with Missed, Short, or Late Meal Periods Create a Rebuttable Presumption

The second issue the Court addressed was whether time records showing non-compliant meal periods raise a rebuttable presumption of violations. The Court held they do. The Court reiterated that under existing law employers are not required to "police" employees' meal breaks. However, the Court clarified that where records show non-compliant meal breaks, the employer's argument that the employee voluntarily caused the violation is an affirmative defense. This presumption does not create automatic liability for an employer. But to overcome it, an employer must have evidence that the employee could have taken a compliant meal period but failed to do so.

Does *Donohue* Signal the End of Rounding Policies for Hours Worked?

In *Donohue*, the Court acknowledged that neutral rounding policies for hours worked were developed to allow employers to efficiently calculate hours worked and wages owed to employees. However, the Court also noted that AMN's timekeeping system had actually taken unrounded time punches and converted them to rounded time punches, calling into question whether any efficiencies were actually created for the employer. While the Court did not state that neutral rounding policies are no longer lawful or viable, it noted that AMN switched to a new timekeeping system that did not round time punches after this lawsuit was filed. It concluded by noting that, "[a]s technology continues to evolve, the practical advantages of rounding policies may diminish further." Thus, while employers may continue to use neutral rounding policies to calculate wages due for hours worked, given advances in technology and increased court scrutiny, employers should consider whether "paying to the minute" is advisable.

Takeaways

- Review and correct any policies and practices for rounding meal period time punches
- Ensure a process for reviewing time punches
- Implement a process to document employee acknowledgment for voluntary non-compliant meal periods
- If a violation occurs, pay appropriate premiums
- Review use of neutral rounding policies for hours worked

If you have questions, please contact an attorney in our Employment Law group by phone at (916) 321-4444 or via email.

Kimberly Lucia klucia@boutinjones.com
Lissa Oshei loshei@boutinjones.com
Gage Dungy gdungy@boutinjones.com
Jim McNairy jmcnairy@boutinjones.com
Bruce Timm btimm@boutinjones.com
Errol Dauis edauis@boutinjones.com