



Employment Auditor's Notepad

CALCULATING PREMIUM PAYMENTS FOR MISSED BREAKS

California Labor Code section 226.7 provides that if an employer fails to provide its hourly employee with a meal or rest break in accordance with the California Wage Orders, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided (known as "penalty pay" or "premium pay").

Neither the Labor Code nor the Wage Orders make clear whether an employee is entitled (1) one hour of pay for each violation, (2) one hour of pay for each day, or (3) one hour of pay for all meal break violations in one day and another hour of pay for all rest break violation in one day. Fleming PC has been advising its clients that the most sensible reading of the statute and Wage Orders is the third. In *Marlo v. United Parcel Service, Inc.*, 2009 U.S. Dist. Lexis 41948 (C.D. Cal. 2009), the United States District Court for the Central District of California agreed. The court reasoned that since the Wage Orders discuss the penalty payments in two separate sections, they evidence a legislative intent to provide separate penalty payments for the different violations.

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Triggering the Employer's Duty to Reimburse Employee Expenses

THE EMPLOYER MUST HAVE ACTUAL OR CONSTRUCTIVE KNOWLEDGE TO TRIGGER LABOR CODE 2802 OBLIGATIONS

California Labor Code section 2802 provides that an employer must reimburse its employees for all necessary expenditures and losses incurred as a direct consequence of the employment. Unlike other sections of the Labor Code, Section 2802 does not directly address when this duty is triggered.

In *Stuart v. RadioShack Corp.*, 2009 U.S. Dist. Lexis 41658 (N.D. Cal. 2009), the plaintiffs filed a lawsuit against RadioShack Corporation seeking reimbursement for expenses incurred by the employees' use of personal vehicles for company purposes. The Court held that once an employer knew or had reason to know that the employee had incurred an expense, it then had the duty to exercise due diligence and take any and all steps to ensure that the employee was reimbursed. The fact that RadioShack had promulgated policies requiring employees to report their expenses did not, by itself, fulfill the employer's duty of due diligence.

In further proceedings, the Court went on to hold that equitable defenses such as waiver, laches, and equitable estoppel may not be asserted by the employer to avoid payment of reimbursements to employees even if the employee knowingly fails to submit a request for reimbursement.

New Laws on the Horizon: A.B. 1000

MANDATORY PAID SICK LEAVE FOR CALIFORNIA EMPLOYERS

A.B. 1000 would require all California employers, regardless of size, to provide employees for at least one hour of paid sick leave for every 30 hours worked. The bill would also require California employers to carry over sick leave from year to year with a cap of no less than 40 hours for employers with 10 employees or less or a cap of no less than 72 hours for larger employers.

Finally, the bill carries with it a presumption of retaliation if an employer takes any adverse action against an employee within 90 days of the employee opposing an unlawful practice, filing a complaint with the Labor Commissioner, or cooperating in an investigation. In order to overcome the presumption, the employer would be required to present evidence of a nonretaliatory reason for taking the adverse action. Stay tuned...

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