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## **Employers Must Provide Time for Both Meals and Rest or Face Dual Penalties for Each Single Day the Meal and Rest Requirements are Violated**

Recently, the California Court of Appeal issued a decision that plaintiffs will welcome, and of which employers should be aware. In *United Parcel Service, Inc. v. Superior Court*, --- Cal. App. 4th ---- (2011), 2011 WL 523633, the Court of Appeal held that Labor Code § 226.7 provides for two hours of premium pay per day when an employee misses both a meal and a rest period.

### **Facts of *United Parcel Service, Inc. v. Superior Court***

In *United Parcel Service, Inc.*, UPS was a defendant in 32 coordinated actions by employees who sought compensation for, among other claims, UPS's alleged failure to provide meal and rest periods as required by California Labor Code § 226.7. That statute provides that:

No Employer shall require an employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission (IWC)...if an employer fails to provide an employee with a meal period or rest period...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.

UPS argued the statute meant that only one premium payment is allowable per day regardless of the number or type of break periods that were not provided. The plaintiffs disagreed, contending that the statute, and IWC Wage Order No. 9-2001 (which applies to wages in the transportation industry) allows up to two premium payments per work day – one for the failure to provide meal periods, the other for the failure to provide rest periods.

The trial court agreed with the plaintiffs. On appeal, the Court of Appeal analyzed the issue by first applying long-established rules of statutory interpretation. Further, the Court was aware of the California Supreme Court's directive to liberally construe statutes that are for the protection and benefit of the employee. Finally, the Court looked at the legislative history of the statute and the IWC's wage orders. In doing so, the Court made a number of conclusions.

First, the Court observed that the federal district court in *Marlo v. United Parcel Service, Inc.*, C.D. Cal. May 5, 2009, 2009 U.S. Dist. Lexis 41948, has ruled directly on all of these issues. There, UPS employees had sued for, among other things, payment of meal and rest breaks under section 226.7. The federal

court had concluded that the plaintiff's interpretation, that the phrase "meal or rest period" contained in the statute constitutes two separate violations, which suggests that each type of violation leads to one hour of extra compensation, was reasonable.

The federal court then looked to the legislative history of the statute. The Court determined that section 226.7 and the IWC wage orders became effective at the same time and that the Legislature was aware of the IWC wage orders when it passed section 226.7. This, the Court concluded, tended to support the employee's reading of the statute. Finding this analysis inconclusive, however, the Court looked at the wage order itself. In doing so, the Court concluded that the wage order provides separate remedies for violations of meal periods and for rest period requirements.

The Court of Appeal agreed with the *Marlo* federal district court. It held that the statutory language of "meal or rest period" could be reasonably construed as requiring compensation twice, for violation of the meal period requirements and for violation of the rest period requirements. The Court also found the legislative history to be inconclusive. Turning its attention to the administrative and legislative history, the Court agreed with the federal district court that the IWC's orders supported an interpretation that Labor Code § 226.7 required up to two premium payments per work day - one for each type of violation.

### **What an Employer Must Do**

Given this decision, it is critical that employers are familiar with Labor Code § 226.7's requirements for rest periods and for meal periods. Failure to provide time for both subjects employers to liability for two separate premium wage payments per day. Familiarity with these requirements and vigilant enforcement of them will save employers time and money by avoiding litigation.