

CALIFORNIA SUPREME COURT INCREASES POTENTIAL PENALTIES FOR UNPAID OR UNREPORTED MISSED-BREAK PREMIUMS

By Melanie Kim

On May 23, 2022, the California Supreme Court released its long-awaited decision in *Naranjo v. Spectrum Security Services, Inc.* This employee-friendly decision will affect almost every business with employees in California. In short, California employers may now be held liable for large waiting time penalties and wage statement penalties for unpaid and unrecorded missed-break premiums.

What are waiting time penalties?

Upon separation, employees must be paid all unpaid wages by the applicable statutory deadlines. When the final paycheck is not paid on time, or does not include all wages owed, an employer can be liable for waiting time penalties. Waiting time penalties are a sort of statutory “interest” on unpaid wages, accruing at a rate of one day of wages for every day following the employee’s last day, up to 30 days of wages.

For example, consider an employee who was working full-time at \$14.00/hour^[1], 8 hours a day and 5 days a week. If, upon this employee’s termination, the employer does not pay out all wages owed, this employee is then owed that unpaid amount, plus \$112 (14 x 8) for every day following the date of termination, up to a maximum of \$3,360 (112 x 30).

What are missed break premiums?

California law sets out meal and rest period requirements that apply to all non-exempt employees that work in California.

First, employers must “make available” a 30-

minute unpaid off-duty meal break for every day that the employee works at least five hours. If the employee works ten hours or more, the employee must be allowed to take two meal breaks. The first meal break must be taken before the fifth hour of work, and the second meal break must be taken before the tenth hour of work.

Second, most employers must “make available” a 10-minute paid off-duty rest break for every day that the employee works four hours or a major portion thereof (i.e. the rest break requirement is triggered starting at 3.5 hours of work).

And for every workday where an employee is prevented from taking a compliant meal break or rest break, or where such breaks are not made available, the employer has to pay the employee a “missed break premium” equal to one hour of regular pay.

Returning to our example, if the employee worked a full 8-hour day but was not allowed to take a full 30-minute meal break, and was not allowed to take two 10-minute rest breaks, that employee must be paid a total of \$28 in “missed break premiums” for that day (one hour of pay for the meal break violation plus one hour of pay for the rest break violation – multiple missed rest breaks count as just one violation).

What was decided in *Naranjo*?

Prior to this May 23, 2022 decision, California courts had issued conflicting decisions as to whether “missed break premiums” were to be considered “wages” for purposes of waiting time penalties. State courts were coming to different

conclusions about whether failure to pay missed-break premiums exposed an employer to waiting time penalties.

The California Supreme Court in *Naranjo* settled this matter in favor of employees, concluding that missed-break premium pay constitutes wages subject to waiting time penalties. The Court also held that unpaid premium pay is subject to wage statement penalties.

Naranjo worked as a guard for Spectrum Security Services, Inc., a custodial services company. Spectrum's policy required custodial employees (including *Naranjo*) to remain on duty during meal breaks, but initially had not required those employees to sign an on-duty meal break agreement. After leaving his post to take a meal break, *Naranjo* was suspended and eventually fired. *Naranjo* filed a class action on behalf of his fellow employees, accusing Spectrum of violating California meal break requirements. The class sought premium pay for each day on which Spectrum failed to provide employees a legally compliant meal break. *Naranjo* also sought two types of statutory penalties: waiting time penalties for failure to timely pay the premiums to employees upon their discharge or resignation, and wage statement penalties for failure to report the premium pay on employees' wage statements

The California Supreme Court in its May 23 opinion found that missed-break premium pay was comparable to other types of premiums, like overtime, reporting-time, and split-shift pay, all of which are subject to waiting time penalties and wage statement penalties. In response to the employer's argument that missed-break premium pay, unlike those other examples, remedies a legal violation, the Court wrote, "why should this difference matter?"

In Sum

This decision could exponentially increase the penalty for employers who fail to pay required missed-break premiums, and/or do not list those premiums on wage statements (even if these omissions stem from mere oversight or technical mistakes).

Employers with employees in California should carefully review their meal and rest break policies for compliance with the most up-to-date statutes and case law. Employers should also check that they have the right systems in place to ensure (and document) that these policies are being implemented in practice.

Our [Employment Law group](#) is here to help employers and employees navigate the constantly changing, and at-times confusing waters of California employment law. If you would like to consult an attorney or need help with a claim, please reach out to us.

[1] FYI, \$14/hour is the current state minimum wage for employers with 25 employees or less



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