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# LEGAL ALERT

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## California Supreme Court Ruling Could Quadruple Potential Damages For Meal and Rest Period Violations

The California Supreme Court has sent a shockwave through the California business community by ruling that premium pay issued to employees under California *Labor Code* section 226.7, to compensate them for missed meal and rest periods carries a three-year statute of limitations as opposed to a one-year statute of limitations.

In its unanimous decision, the California Supreme Court held in *Murphy v. Kenneth Cole Productions, Inc.* that the “one additional hour of pay” provided under Section 226.7 is a wage or premium subject to a three-year statute of limitations rather than a penalty subject to a one-year statute of limitations. The Court’s ruling overturned a Court of Appeals decision and is contrary to the majority of state appellate and federal court rulings on the issue, as well as to the position taken by the California Division of Labor Standards Enforcement (DLSE) prior to the *Kenneth Cole* decision.

### Background Of The *Kenneth Cole* Case

Kenneth Cole employed Murphy as a store manager at one of its retail clothing stores for approximately two years from June 2000 until June 2002. Murphy was paid a weekly salary and worked shifts regularly between nine to ten hours in length. Although Murphy had a managerial designation, he engaged in tasks that were almost identical to those a store sales attendant would do. For example, Murphy spent approximately four hours each morning making sales to customers, transferring products, processing markdowns and cleaning parts of the store. Murphy’s afternoon responsibilities included carrying merchandise into the stockroom and covering the sales floor.

Court records indicate that at some point during his shift, Murphy would go to the store’s back office and eat as he continued to work on administrative matters such as human resources paperwork and checking e-mail. Upon returning to the storeroom floor, Murphy would assist customers and stock shelves with clothes or merchandise. The Court’s decision also indicates that Murphy rarely had the opportunity to take a rest period and, on occasion, was unable to go to the restroom.

After resigning his position in June 2002 and being advised by a friend that he was not paid properly, Murphy filed an unpaid wages claim with the DLSE alleging that he was owed overtime. The Labor Commissioner issued a decision in Murphy’s favor finding that Kenneth Cole did not sufficiently demonstrate that Murphy was exempt from overtime. Murphy was awarded unpaid overtime, interest and waiting time penalties.

Kenneth Cole appealed the decision to the San Francisco Superior Court and, in response, Murphy amended his complaint to include claims for missed meal and rest period violations. Kenneth Cole argued that Murphy should be prohibited from amending his claim, but the trial court rejected the

argument reasoning that “hearing the new claims served the interests of judicial economy, preserving the rights of the parties, and discouraging appeals by subjecting employers who appeal to additional liability.” Not surprisingly, the trial court later awarded Murphy unpaid overtime, plus premiums, as well as payments for missed meal and rest periods dating back three years.

Kenneth Cole appealed the trial court’s ruling to the California Court of Appeals on the grounds that Murphy should have been



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prevented from amending his claim and that the trial court incorrectly applied a three-year statute of limitations to the meal and rest period claims. The Court of Appeals affirmed in part and reversed in part, holding that payments assessed for meal and rest period violations are penalties subject to a one-year statute of limitations and that claims may not be raised for the first time on an appeal from an administrative hearing in front of the Labor Commissioner. The California Supreme Court has now reversed both of the appellate court's holdings.

## Supreme Court's Ruling

In announcing the Court's unanimous ruling, Justice Carlos Moreno began the opinion by concluding that Section 226.7's language suggested that the one hour of premium pay should be considered a wage. Justice Moreno noted that "statutes governing conditions of employment are to be construed broadly in favor of protecting employee" and that the ability to take a meal period constitutes "wages" because the term "wages" has been expansively defined by both statute and case law as including any benefit to which an employee is entitled as a part of his or her compensation.

Justice Moreno next reviewed the administrative and legislative history of the statute. To support the Court's position that the payment is a wage, Justice Moreno noted that the initial proposed statutory language of Section 226.7 included a statutory civil penalty which was later removed. The deletion of the civil penalty from the final law supported the Court's position that "like overtime pay provisions, payments for missed meal and rest periods were intended to be enacted as a premium wage to compensate employees, while also acting as an incentive for employers to comply with labor standards."

In addition, Justice Moreno rationalized that linking the amount of the premium pay for missed meal or rest periods to an employee's rate of compensation, rather than a prescribed fixed amount, further supports the position that section 226.7 payments are a form of wages. The statute's plain language, the administrative and legislative history, and the compensatory purpose of the remedy, according to Justice Moreno, compel the conclusion that the "additional hour of pay" is a premium wage intended to compensate employees, not a penalty against employers who fail to provide meal or rest periods to their employees.

## Bad News For Employers

The Court's holding that the one hour of additional pay required under Section 226.7 constitutes a "wage" subject to a three-year statute of limitations, and not a penalty subject to a one-year limitation period will open up a Pandora's box of costly litigation for employers. Perhaps most problematic is that employees may now seek Section 226.7 wages for a four-year period prior to filing the complaint by including a claim under California *Business and Professions Code* section 17200 in a civil complaint.

Also troublesome about the new potential four-year statute of limitations is the likely increase in meal and rest period violation class action lawsuits. Plaintiffs' attorneys, who would otherwise be

disinterested in a case with damages only going back one year, will now have an incentive to bring a class action lawsuit based upon the increased potential damages. From a litigation standpoint, the extended statute of limitations significantly expands the potential class of plaintiffs and also places additional burdens on employers to maintain and produce employee time and payroll records for the applicable four-year period.

The *Kenneth Cole* decision's impact is not limited to class action lawsuits; single plaintiff lawsuits are also affected. Employees who do not receive all Section 226.7 pay on a timely basis can assert claims under *Labor Code* section 203, which provides for a penalty of up to 30 days of an employee's pay due to improper payment of final wages upon the conclusion of an individual's employment. Additional claims resulting from the *Kenneth Cole* decision may include a failure to provide proper itemized wage statements under *Labor Code* section 226, substantial penalties under the Private Attorneys General Act as well as awards of attorney's fees and pre-judgment interest on claims based solely on meal and rest period violations.

## Questions Still Waiting In The Wings

One of the biggest questions left unresolved by the *Kenneth Cole* decision is whether punitive damages will now be available to employees who bring claims for failure to provide meal or rest periods. The California Court of Appeals is currently reviewing a case involving Wal-Mart in which the trial court awarded plaintiffs \$115 million in punitive damages based on the trial court's finding that the Section 226.7 premium constitutes a wage thereby entitling the plaintiffs to seek and be granted punitive damages.

Another unresolved issue is whether the *Kenneth Cole* decision has retroactive effect to the scores of meal and rest period violation cases that are currently working their way through the California court system. The general rule is that the decision should have retroactive effect unless an exception applies, such as parties relying on what appeared to be a settled rule in the appellate court level. It is unlikely that appellate courts will invoke the exception, but will instead retroactively apply the *Kenneth Cole* decision, since ruling otherwise would cut short an employee's remedy to seek at least three years of damages.

## What Should Employers Do Now?

At the start of 2007, many California employers believed that the most important employment law compliance issue would be state-mandated harassment prevention training under Assembly Bill 1825. The *Kenneth Cole* decision means that employers now have an urgent incentive to review their policies and procedures relating to meal and rest periods.

All management personnel should be intimately familiar with the general rule that "no employer shall employ any person for a work period of more than five hours without a meal period of not less than 30 minutes." This means that the meal period must begin before an employee has worked more than five hours in any work period. Moreover, meal and rest periods cannot be attached to one another, nor can they

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immediately precede the end of an employee's shift. Depending on the length of the work day, an employee could be eligible for multiple meal periods throughout the day.

Exceptions to the five-hour rule are limited and must be documented and approved by management. For example, an employee who works no more than six hours for the day may waive the first meal period if approved by the Company. We recommend that the waiver be in writing so that there is documented confirmation.

Employers in hospitality, food service and retail industries should review their classification systems to ensure that managers or assistant managers, who spend a majority of their time engaging in non-managerial tasks such as ringing up a sale, cleaning up the store or organizing inventory, are properly provided their meal and rest periods.

With respect to policies and procedures, you should review your company's employee handbook and confirm that the handbook contains

comprehensive policies outlining both employer and employee obligations under relevant meal and rest period laws. In addition, review timekeeping procedures to ensure that, where applicable, your employees are punching or clocking in and out when they take their mandated meal period.

## Conclusion

The California Supreme Court's *Kenneth Cole* decision emphasizes the need for employers to take preventive steps to ensure that they are not subject to unnecessary liability and expenditure of time and resources in costly litigation. You should take immediate action, and consult with counsel if necessary, to ensure that you are complying with state and federal laws. We anticipate a significant increase in meal and rest period violation cases in the weeks and months ahead.

*This Legal Alert is intended to provide an overview and analysis of a specific court decision. It is not intended, and should not be construed, as legal advice for any particular fact situation. For more information, contact an attorney in any of our California offices, or visit our website at [www.laborlawyers.com](http://www.laborlawyers.com).*

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