

## Legal Updates & News

### Bulletins

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## California Supreme Court Issues Landmark Decision Holding That Payments Due to Employees for Missed Meal and Rest Breaks Are Wages and Governed by a Three-Year Statute of Limitations

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In California, employers must provide their non-exempt employees with meal and rest breaks. When an employee fails to take a meal or rest break, whether that failure is due to the fault of the employer or the employee, California Labor Section 226.7 (b) prescribes the following consequence:

“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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.”

Cal. Lab. Code § 226(b) (emphasis added).

Since Section 226.7 was enacted in 2000, a debate has raged between employers and employees, plaintiff attorneys, and defense counsel, and even within the Department of Labor Standards Enforcement over whether the “one hour of additional pay” specified by Section 226.7 amounted to a “wage” or a “penalty.”

On April 16, 2007, the California Supreme Court resolved that debate when it issued its unanimous decision in *Murphy v. Kenneth Cole Productions*. The California Supreme Court held in *Murphy* that the one hour of additional pay required by Section 226.7 was a “pay remedy” that amounted to “wages.” The practical implications of the *Murphy* decision for companies with California employees are significant for a number of reasons, including:

- Employee claims for missed meal and rest breaks will now be governed by the three-year statute of limitations generally applicable to all wage claims, as opposed to the one-year statute of limitations applicable to “penalties.”
- Employees will also seek to expand employer liability for missed meal and rest break claims by asserting an unfair competition claim—subject to a four-year statute of limitations—that arises from an employer’s failure to pay “wages” for missed meal and rest breaks.
- Employees will likely seek additional penalties for failure to pay the “pay remedies” required under Section 226.7, including waiting time penalties (up to 30 days of pay) for failure to pay all wages due and owing at the time an employee’s employment ends.
- Employees may be entitled to punitive damages based on an employer’s failure to remit the “pay remedies” due to employees who fail to take meal or rest breaks. Just one example of this point was the \$172 million dollar award (\$115 million of which was in punitive damages) that an Alameda jury gave to a class of approximately 200,000 Wal-Mart employees who asserted meal and rest break claims against the company.

The *Murphy* decision ensures that individual and class action lawsuits asserting claims for alleged missed meal and rest breaks will continue to flourish in California and is an affirmative step in the wrong direction for California employers. We describe the facts of the *Murphy* case and rationale behind the Court's decision immediately below.

## The Facts

Plaintiff John Paul Murphy ("Murphy") was a store manager who worked for defendant Kenneth Cole Productions, Inc. ("KCP"). Murphy was employed by KCP for two years, from June 2000 to June 2002. During the entire time of his employment, KCP classified Murphy as exempt store manager and did not pay him overtime compensation.

In October 2002, Murphy filed a claim seeking to recover unpaid overtime wages with the California Labor Commissioner, alleging that he was improperly classified as exempt during his employment with KCP. After conducting a hearing, the Labor Commissioner ruled in Murphy's favor and awarded him overtime wages, interest, and waiting time penalties. KCP appealed the Labor Commissioner's ruling to the San Francisco Superior Court. Immediately after KCP filed its appeal, Murphy added a claim that KCP failed to provide him with meal and rest breaks as required by California law.

After a *de novo* trial, the San Francisco Superior Court found that Murphy was misclassified as an exempt employee and awarded him overtime compensation, interest, and waiting time penalties. The San Francisco Superior Court further found that it had the discretion to hear Murphy's new meal and rest break claim, and ruled that KCP failed to provide Murphy with the opportunity to take meal or rest breaks as required under California law. The court found that the payments due to Murphy under Section 226.7 for meal and rest break violations constituted "wages," applied a three-year statute of limitations, and awarded payments to Murphy for meal and rest break violations dating back to October 2000.

KCP appealed the San Francisco Superior Court's decision to the California Court of Appeal, arguing that the trial court erred in finding that the payments for meal and rest break violations under Section 226.7 were wages. The Court of Appeal agreed with KCP's argument. It held that the payments required under Section 226.7 for missed meal and rest breaks were penalties subject to the one-year statute of limitations applicable to "penalties."<sup>[1]</sup>

## The California Supreme Court's Ruling and Rationale

In a unanimous decision, the California Supreme Court rejected all of the arguments advanced by the employer, KCP, and concluded that the one hour of additional pay required by Section 226.7 for missed meal and rest breaks constituted a "wage" or "premium pay." The Court also ruled that the applicable statute of limitations for a claim under Section 226.7 was three years. The California Supreme Court reasoned that both the plain language of Section 226.7 and the statute's legislative history established that Section 226.7's payments were meant to be a wage and not a penalty.

The California Supreme Court started its analysis by focusing on the plain language of Section 226.7, which requires an employer to pay "one additional hour of pay at the employee's regular rate of compensation" for missed meal or rest breaks. The Court defined the word "pay" as used in Section 226.7 by referring to the *American Heritage Dictionary's* definition: "money [given] in return for goods or services rendered." The Court reasoned that this definition of pay was consistent with the Labor Code's definition of "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other methods of calculation." Cal. Lab. Code §200(a). Applying these two definitions, the Court concluded that "it appears to indicate that the 'one hour of additional pay' . . . is a wage to compensate employees" for working through a meal or rest break.

However, the California Supreme Court recognized that Section 226.7 was susceptible to an alternative interpretation, and that the "one hour of additional pay" could be read as a penalty. The Court therefore proceeded to engage in an extensive review of the administrative and legislative history of Section 226.7.

The Court first outlined the history of meal and rest periods stemming back to the early 1900s when the Industrial Welfare Commission ("IWC") issued wage orders mandating the provision of meal and rest periods. The Court found it particularly persuasive that in 2000, the legislature contemplated adding both a "pay remedy" for violation of Section 226.7, and a separate and independent \$50 penalty provision to be collected by the Labor Commissioner. The Senate later amended the bill that eventually became Section 226.7, and in that bill deleted the penalty provision, but not the "pay remedy." In light of the legislative history, the Court concluded that the authors of the bill that enacted Section 226.7 believed that the "pay remedy" contained in

the original version of the bill was independent from and in addition to the penalty provision. Additionally, the Court noted that the legislature chose to eliminate the “penalty” language in Section 226.7 while retaining the word “penalty” in other provisions of the bill.

After finding that both the plain language and legislative history of Section 226.7 supported the conclusion that the pay remedy in Section 226.7 was intended to be a “wage,” the Court went on consider and reject each of the “functional analysis arguments” advanced by KCP. The Court summarily dismissed each of KCP’s arguments, which focused on the practical, detrimental effects of categorizing Section 226.7’s payment as a wage. [2]

### Questions Unresolved by *Murphy* and Practice Advice to Employers

While the Court’s decision in *Murphy* finally puts to rest the issue of whether the payments due under Section 226.7 are wages or penalties, California employers still remain in the dark about how to avoid violating California’s meal and rest break rules. In particular, what remains at issue after the *Murphy* decision—and more acutely at issue now—is what actions an employer must take to comply with the California Labor Code’s mandate to “provide” non-exempt employees with meal periods. Cal. Lab. Code § 512(a).

The oldest DLSE interpretation of “provide” required employers to force their employees to take meal periods. In December 2004, the DLSE issued proposed regulations that offered employees guidance on how to comply California’s meal and rest break rules by essentially explaining that “provide” meant only to “make available” meal and rest breaks. The regulations suggested that Section 226.7’s pay remedies could only be awarded in those cases in which the employer actively prevented employees from taking their breaks. These regulations were withdrawn in 2005, and employer are now left no clear guidance on what they are required to do to “provide” employees with meal breaks and avoid Section 226.7’s pay remedies.

In light of the Supreme Court’s decision in *Murphy*, and the ambiguity that remains on how employer provide their employees with meal periods, employers should consider taking the following steps:

1. Ensure that applicable wage orders are posted in the workplace;
2. Consider preparing written policies describing the employee’s right to take meal and rest breaks;
3. Train supervisors to enforce meal and rest break periods for non-exempt employees. For full-time employees, meal periods should commence before the fifth hour of work; 10-minute paid work breaks usually should be provided for every four hours of work;
4. Maintain adequate records that document when meal and rest periods have been taken;
5. Consider whether voluntarily to make “pay remedy” payments to those employees who fail to take meal and rest periods.

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### Footnotes

[1] The Court of Appeal also reversed the trial court’s finding that it had the discretion to hear *Murphy*’s new meal and rest break claims, which were added for the first time after KCP appealed the ruling by the California Labor Commissioner. This article does not address in detail that portion of the California Supreme Court’s decision, except to note here that the Court held that the trial court correctly determined that it could entertain the new claims for meal and rest breaks asserted by *Murphy* after KCP appealed the Labor Commissioner’s ruling.

[2] The Court found that extending the statute of limitations for Section 226.7 violations to three years for would not impact employers from an evidentiary standpoint because employers are already required to maintain time records, including records of meal periods, for a minimum of three years. Cal.Code Reg., tit. 8 § 11070(7)(A)(3) & (C).