

Oregon Supreme Court Rejects Private Right of Action for Missed Rest Breaks

Lawyers for Employers ®

Breaking Developments In Labor and Employment Law 05/21/08

On May 15, 2008, in *Gafur v. Legacy Good Samaritan Hospital and Medical Center*, the Oregon Supreme Court ruled that no private right of action exists for missed rest periods under Oregon law. The Supreme Court's decision reversed a previous Court of Appeals decision (see the [Lane Powell Hotsheet dated August 10, 2007](#), now superseded), which approved a private right of action for missed rest periods, but denied a private right of action for missed meal periods. The Court of Appeals' denial of a private right of action for missed meal periods was not appealed to the Oregon Supreme Court.

The two reported *Gafur* decisions benefit employers in that they collectively hold that an employee may not bring a private lawsuit for damages against an employer for missed meal or rest breaks. However, it must be noted that *Gafur* is not a complete bar to liability for missed rest breaks and meal periods. Oregon wage and hour laws require employers to provide rest breaks and meal periods to employees, and the Oregon Bureau of Labor and Industries has the authority to bring an action against an employer for meal and rest break violations. Economic consequences of violations of employees' rights to these breaks may include civil penalties and criminal prosecution.

Current Meal and Rest Break Requirements in Oregon

Oregon's requirements for rest breaks and meal periods are based on the length of an employee's work period, as set forth in the chart below:¹

Length of work period	Number of rest breaks required	Number of meal periods required
2 hrs or less	0	0
2 hrs, 1 min to 5 hrs, 59 mins	1	0
6 hrs	1	1
6 hrs, 1 min to 10 hrs	2	1

10 hrs, 1 min to 13 hrs, 59 mins	3	1
14 hrs	3	2
14 hrs, 1 min to 18 hrs	4	2
18 hrs, 1 min to 21 hrs, 59 mins	5	2
22 hrs	5	3
22 hrs, 1 min to 24 hrs	6	3

¹ For adult employees in Oregon.

Additional requirements for lawful rest breaks and meal periods for Oregon employees include:

For Rest Breaks

- Paid rest breaks of no less than 10 minutes must be given for every four hours worked or major fraction thereof.
- Rest breaks must be given approximately in the middle of each work segment.
- Rest breaks may not be added to meal periods or taken at the end of the day to shorten the employee’s workday.

For Meal Periods

- Employers must provide employees with an appropriate meal period.
- In a 6-8 hour shift, “appropriate” is at least 30 minutes. If the work period is at least six hours, but less than seven hours, the meal must be taken between the second and fifth hour worked. If the work period is more than seven hours, the meal period must be taken between the third and sixth hour worked.
- No meal period is required if the workday is less than six hours.
- The employee must be relieved of duties during the entire meal period.
- The meal period may be a period where the employee can eat and remain on call only if (a) the employer can show the circumstances of the work prevent the employee from being relieved of all duty, and (b) this period is not deducted from the employee’s hours worked (the employee must be paid for his/her time).

What this Means for Employers

While Oregon employers will be gratified that the Oregon Supreme Court has ruled that employees cannot bring individual lawsuits for damages arising from late or missed breaks, compliance with statutory obligations, whether state or federal, remains important. Employers should continue to ensure that their employees receive the meal and rest breaks that they are entitled to under applicable laws, which often vary from state to state.

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