

CALIFORNIA SUPREME COURT SIGNALS THE END FOR ROUNDING MEAL BREAK TIME

05.10.2021

Employment Law Reporter, Ervin Cohen & Jessup LLP

PROFESSIONALS

Jared W. Slater

PRACTICE AREAS

Employment

As technology has advanced, employers routinely rely on electronic timekeeping software to ensure accurate record keeping. Such software often includes a setting to round employees' time (typically to the nearest quarter hour) and is implemented as a result of either deliberate company policy or through inadvertent default. Regardless, employers should review these policies and settings following the California Supreme Court's recent decision in *Donohue v. AMN Services, LLC*.

In *Donohue*, the Court unequivocally held employers may no longer round an employee's in and out time for meal periods. Further, employers may not rely on signed certifications from the employee attesting to taking a fully compliant meal period when the time records show an incomplete meal period. Rather, time records showing non-compliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.

The employer in *Donohue*, AMN Services, LLC, used an electronic timekeeping system to track its employees' compensable time throughout the day, including at the beginning and end of each shift, and the beginning and end of each meal period. The timekeeping software rounded the time punches to the nearest ten-minute increment. The Court provided the following example: "...if an employee clocked out for lunch at 11:02 a.m. and clocked in after lunch at 11:25 a.m., [the timekeeping software] would have recorded the time punches as 11:00 a.m. and 11:30 a.m. Although the actual meal period was 23 minutes, [the timekeeping software] would have recorded the meal period as 30 minutes."

Reiterating the principles espoused by the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court*, the Court stressed the precision of the timekeeping requirements set out in Labor Code Section 512 and Wage Order No. 4. Quoting the relevant meal break language – "not less than 30 minutes," "no later than the end of the fifth hour of work" and "no later than the end of the tenth hour of work" – the Court confirmed that the imprecision of rounding meal periods was at odds with the exacting language of the

applicable statutes and wage orders. The Court further emphasized the distinction between meal periods and the beginning and end of an employee's shift: "[f]or purposes of calculating wages, counting slightly fewer minutes a day can be made up by counting a few more minutes another day. But the same is not true for meal periods."

In addition, the *Donohue* Court reaffirmed an employer's duty to demonstrate that its employees were provided legally compliant meal periods but determined that the employer *may not* rely on timesheet certifications to demonstrate that such meal periods were actually taken. According to the Court, "[i]f employees would not have known about potentially non-compliant meal periods ... unless they kept their own time records, then the certifications would be inaccurate and cannot be used to prove that there were no meal period violations." Rather, an employee's actual time records create the rebuttable presumption as to whether the employee was provided a legally compliant meal period.

Key Takeaway:

The advancement of technology can be a great boon to employers. But employers must be vigilant to avoid implementing policies and settings in the timekeeping software that automatically round an employee's meal periods. Rather, meal period punches should be accurately recorded to the minute to ensure compliance. Moreover, while the Court did not address the use of rounding outside of the meal period context, due to the propensity to generate legal claims even where properly implemented, we advise against using any rounding policies in tracking employee time.