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## Changes to California Meal Period Law

On February 25, 2021, the California Supreme Court issued its decision in *Donohue v. AMN Services, LLC*, holding that: (1) employers cannot round time punches for meal periods; and (2) time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations at summary judgment.

### Background Facts

AMN Services, LLC, a healthcare services and staffing company, utilized an electronic timekeeping system which recorded employee time punches and rounded the time punches to the nearest 10-minute increments. For example, if an employee clocked out for lunch at 11:02 a.m. and clocked in after lunch at 11:25 a.m., their time punches would have been recorded as 11:00 a.m. and 11:30 a.m. Although the actual meal period was only 23 minutes, AMN's rounding timekeeping system would have recorded the meal period as 30 minutes.

### California's Meal Period Law

As a refresher, under California law, employers must generally provide employees with one 30-minute meal period that begins no later than the end of the fifth hour of work and another 30-minute meal period that begins no later than the end of the tenth hour of work. If an employer does not provide an employee with a compliant meal period, then the employer must pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

### California Supreme Court's Decision in *Donohue*

In this case, the Court decided two questions of law relating to meal periods. First, it held that employers cannot engage in the practice of rounding time punches — that is, adjusting the hours that an employee has actually worked to the nearest preset time increment — in the meal period context. The Court reasoned that the imprecise calculations that the practice of rounding time punches for meal periods involves is inconsistent with the precision of the time requirements set out in the Labor Code and wage orders for meal periods. The Court concluded that small rounding errors can amount to a significant infringement on an employee's right to a timely 30-minute meal period.

Second, the Court held that time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations at summary judgment. The presumption goes to the question of liability and applies at the summary judgment stage, not just at the class certification stage. If time records show missed, short, or delayed meal periods with no indication of proper compensation, then a rebuttable presumption arises. Employers can rebut the presumption by presenting evidence that employees were compensated for noncompliant meal periods or that they had in fact been provided compliant meal periods during which they chose to work.

### **Key Takeaways from *Donahue* for Employers**

- Employers may no longer round time punches for meal periods. Employers should promptly end their meal period rounding practices.
- Although the Court did not decide the validity of rounding generally, it noted that “technological advances may help employers to track time more precisely” and “[a]s technology continues to evolve, the practical advantages of rounding policies may diminish further” suggesting that rounding practices may no longer be necessary. In light of the Court’s acknowledgement that rounding policies may be outdated, employers would be wise to contemplate eliminating their rounding practices entirely.
- Employers must give their employees a mechanism for recording their meal periods and ensure that employees use the mechanism properly.
- Employers should consider timekeeping systems in which meal period noncompliance is flagged and employees must affirmatively state the reason for their untimely, missed, or short meal periods to address situations in which they voluntarily chose to forgo a compliant meal period.

As with all important employment law developments, employers should consult with employment law counsel to further discuss the impact that *Donahue* may have on their operations.