

FOCUS ON CALIFORNIA: ON-CALL REST PERIODS

Augustus v. ABM Security Services, Inc., 2016 WL 7407328 (2016)

In December 2016, the California Supreme Court concluded that California state law prohibits on-duty and on-call rest periods. Following this decision, employers must relieve employees of their duties during rest periods and cannot exercise any control over how employees utilize their break time.

The *Augustus* class consisted of 14,000 security guards employed by defendant ABM Security Services who were required to keep their pagers and radio phones on, even during rest periods. ABM argued that this practice was necessary due to the possibility of an emergency situation or other event requiring immediate attention. The trial court granted summary judgment for the plaintiffs, finding ABM liable and awarding \$89.7 million. However, the Court of Appeal reversed that decision on the grounds that “simply being on call” did not constitute performing work. Subsequently, the California Supreme Court reversed the Court of Appeal’s judgment and reinstated the trial court’s award.

In reaching this conclusion, the court analyzed off-duty rest periods and on-call rest periods. With regard to off-duty rest periods, the court examined Industrial Welfare Commission wage order No. 4-2001 (Wage Order 4), which provides in part, “Authorized rest period time shall be counted, as hours worked for which there shall be no deduction from wages.” The court explained that such language would only make sense if employees were in fact relieved of their duties during rest periods. Further, the court compared this wage order to wage order No. 5-2001 (Wage Order 5), which does require employees “to remain on the premises and maintain general supervision of residents during rest periods” but only in the limited circumstance where one is in “sole charge” of residents at certain 24-hour residential care facilities. The absence of similar language in Wage Order 4 supported the court’s conclusion that the wage order did not require employees to maintain their duties during rest periods.

As for on-call rest periods, the court determined that this concept could not be squared with the requirement that employers relieve employees of their duties during rest periods. Requiring employees to maintain certain duties (*e.g.*, carrying a communication device) during rest periods was deemed “irreconcilable with employees’ retention of freedom to use rest periods for their own purposes.” The court revisited Wage Order 5, indicating that the Industrial Welfare Commis-

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sion clearly could have, but did not, construct similar provisions for on-call rest periods under Wage Order 4. On these grounds, the California Supreme Court reversed the Court of Appeal's judgment.

Moving forward, employers may consider the option of rescheduling employees' rest periods if the need arises. The court expressly stated that its opinion did not circumscribe such an option, but nonetheless emphasized that "[a] rest period, in short, must be a period of rest." As a result, employers must relieve their employees of all duties, including the obligation to remain on-call, during rest periods.