

# California Supreme Court Invalidates Rounding Practices for Employee Meal Periods and Imposes Rebuttable Presumption of Meal Period Violations

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On February 25, the California Supreme Court issued its ruling in *Donohue v. AMN Services, LLC* that employers may not round employee time punches in the meal period context, and that time records showing potentially noncompliant meal periods raise a rebuttable presumption of meal period violations. The upshot of this latest decision is that it is not enough for California employers to have a policy that “provides” required meal periods or even to record the actual timing and length of such meal periods. Employers must also be prepared to prove that any deviation from the required meal period was by employee choice, without any pressure or influence by the employer. Thus, for each time an employee’s meal period is short of 30 minutes, late (even one minute after five or ten hours of work), or missed, the employer bears the burden of proving that the employer provided the meal period, and that the employee voluntarily chose not to take it — even in some circumstances when an employee signs a timesheet each pay period, confirming that the employer had in fact provided all such breaks.

## AMN’s Rounding Practices for Meal Periods

The plaintiff, Kennedy Donahue, brought a class action lawsuit against her former employer, AMN Services, LLC, alleging various wage and hour violations, including meal period violations. During Donahue’s employment, AMN utilized a timekeeping system that rounded employee time punches to the nearest 10-minute increment. For example, an employee who clocked out for lunch at 11:02 a.m. and clocked back in at 11:25 a.m. would be rounded to 11:00 a.m. and 11:30 a.m., reflecting a compliant 30-minute meal period in the time records, even though the employee’s actual lunch break was only 23 minutes. Likewise, an employee who clocked in to work at 6:59 a.m. and clocked out for lunch at 12:04 p.m. would be rounded to a 7:00 a.m. start time and 12:00 p.m. lunch, even though the employee began the lunch break after the end of the fifth hour worked. In both instances, the record of rounded time punches would not reflect any short or late meal periods, yet the unrounded punches would show a short or late meal period.

AMN also had a practice of paying meal period premiums based on an employee’s response to a series of computer-prompted questions about why the meal period was missed, shortened, or delayed. However, AMN’s timekeeping system relied only on the rounded punches when flagging potential meal period violations. As a result, AMN’s system required employees to explain whether a shortened or delayed meal period was voluntary or involuntary only if the rounded punches triggered a meal period violation. AMN’s timekeeping system did not flag potential meal period violations from the unrounded punches, but AMN had a separate practice of having employees confirm in writing at the end of each pay period whether they had been provided all meal periods and inviting them to correct the record if needed. At the trial court level, AMN presented undisputed expert testimony

that AMN's rounding practices resulted in AMN overpaying class members by 85 hours, and that the actual average meal period was 45 minutes.

The trial court granted summary judgment in favor of AMN, which the Court of Appeal upheld, but the California Supreme Court has now reversed those decisions.

### **Rounding in the Context of Meal Periods Contradicts Legislative Intent**

In reversing the Court of Appeal's decision, the Supreme Court acknowledged that AMN's rounding practices, as applied to the class, had resulted in an overpayment of wages, but the Court emphasized that AMN's rounding practices did not result in required payment of premium wages for meal period violations. The Court noted the legislative purpose in enacting the meal period regulations to protect working conditions and employee health and safety. In light of these protections, the regulations set forth the exact length of meal periods and timing in which such meal periods must be taken. As a result, even minor infringements of these meal period regulations trigger an employer's obligation to pay a premium, and the imprecise nature of rounding in the context of meal periods is at odds with the precise requirements of the regulations. In the most extreme example, a rounded punch of 12:00 p.m. to 12:30 p.m. could translate to either a 21-minute lunch from 12:04 p.m. to 12:25 p.m. or a 39-minute lunch from 11:55 a.m. to 12:34 p.m., and anything in between. The Court explained that AMN's meal-period rounding practices were not neutral because "[i]t never provides employees with premium pay when such pay is not owed, but it does not always trigger premium pay when such pay is owed."

### **Records that Reflect Shortened, Delayed, or Missed Meal Periods are Presumed to Show Meal Period Violations Unless Rebutted by the Employer**

The Court also held that time records that show shortened, delayed, or missed meal periods raise a rebuttable presumption of meal period violations, which employers may rebut by presenting evidence of "bona fide relief from duty or proper compensation." For example, if an employee chooses to clock in after lunch a few minutes early, the employer must either pay the one hour of extra pay as a premium for the shortened meal period (and keep an accurate record of that payment), or the employer must keep a record to prove that the employee voluntarily chose to return to work early and forego the full, 30-minute meal period. Without such records, the employer will be deemed to have violated the meal period requirements.

Employers that rely only on employee general acknowledgments and certifications that the employee received compliant meal periods, such as timesheet certifications, should be aware of the Court's view that such certifications cannot be used to prove that the employer provided the compliant meal period if employees would not have known about the potentially noncompliant meal periods that were not flagged by the employer. The Court reasoned, "It is the employer's duty to keep accurate time records; the law does not expect or require employees to keep their own time records to uncover potential meal period violations."

### **Conclusion**

While the practice of rounding can be lawful for purposes of calculating wages, and it may sometimes even result in overcompensation, employers should review their timekeeping and rounding practices to eliminate any rounding for purposes of documenting when and for how long employees take their meal periods. Employers should also

maintain accurate time and meal period records and document the evidence needed to overcome the rebuttable presumption of any possible meal period violations, such as regularly reviewing employee time records; investigating any shortened, delayed, or missed meal periods, including the reasons for those facially noncompliant meal periods; and paying meal period premiums when warranted. If you have questions, please contact a [Troutman Pepper Labor and Employment attorney](#).

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