

# California Supreme Court Substantially Increases Stakes for Noncompliant Meal and Rest Breaks

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On May 23, the California Supreme Court issued its ruling in *Naranjo v. Spectrum Security Services, Inc.*, holding that the one-hour premium for missed meal and rest breaks constitutes wages that expose employers to substantial additional penalties if employers do not (1) accurately report the premiums on wage statements under California Labor Code Section 226, and (2) timely pay the premiums upon employment termination, along with all other accrued wages, as required under California Labor Code Section 203.

As an example, if an employee's timesheet reflects a 29-minute meal period, rather than the required 30-minute meal period, and the employer cannot prove that the employee voluntarily cut short the meal period by one minute, then the employer must pay the employee a one-hour premium at the regular rate of pay (calculated to include the hourly rate, plus all applicable forms of nondiscretionary compensation such as any nondiscretionary bonuses and commissions earned in the same pay period). The employer also must accurately itemize that one-hour premium payment on the wage statement and include it in the payment of final wages at the time of termination. The failure to promptly identify and pay premiums for the missed or otherwise noncompliant breaks (which can include a one-minute "short" meal period or a one-minute late meal period) and include the premium payments on the itemized wage statements now exposes the employer to as much as \$4,000 in wage statement penalties, plus up to 30 days of additional wages as waiting time penalties if all premiums for missed breaks are not included in the final wages.

## Background

In the underlying case, a security guard brought a class-action lawsuit against Spectrum Security Services, alleging violations of the California Labor Code for missed breaks, including failure to report premium pay for missed meal periods on employee wage statements under Section 226, and failure to timely pay premium pay upon an employee's termination of employment under Section 203. The trial court certified the class of security guards who had missed meal periods, based on the absence of a written on-duty meal period agreement. The issue on appeal was whether the unpaid premium payments should be treated as unpaid "wages," rather than penalties, for purposes of compliance with the requirements for accurate wage statements and final wage payments upon termination of employment.

The California Supreme Court held that the missed break premiums are wages for purposes of triggering an employer's wage statement and final wage payment obligations under Labor Code Sections 226 and 203, respectively. Although the premium pay is designed to compensate employees for unlawful deprivation of a

guaranteed break, the court noted that the premium pay also compensates employees for work performed during the break period, and therefore constitutes wages within the meaning of the wage statement and final wage payment statutes. The court also clarified that the default prejudgment interest rate that applies to amounts due for unpaid meal and rest break premiums is 7%.

## Takeaways

The *Naranjo* ruling increases the potential liability for California employers already battling complex wage and hour compliance issues — especially when considering the ramifications of the California Supreme Court’s rulings in 2021, including *Donohue v. AMN Services, LLC* and *Ferra v. Loews Hollywood Hotel, LLC* (which we reported [here](#) and [here](#)). Notably, in *Donohue*, the California Supreme Court held that employers may not round employee’s meal period time records, and it established that time records showing potentially noncompliant meal periods (even a minute short or late) raise a rebuttable presumption of meal period violations. Then, in *Ferra*, the court held that when calculating meal and rest break premiums, the “regular rate of compensation” is synonymous with that used to calculate overtime payments, meaning that when calculating the one-hour premium for a missed break, employers must account for an employee’s base hourly rate, as well as other forms of nondiscretionary compensation (*e.g.*, commissions, nondiscretionary bonuses) during the same pay period.

Now with *Naranjo*, California employers face expanded liability for failure to comply with these complex meal and rest break requirements, including waiting time penalties for failure to timely provide such premiums upon termination of employment under Labor Code Section 203, plus the penalties and attorneys’ fees and costs available to a prevailing plaintiff for noncompliant wage statements under Labor Code Section 226. In addition, these violations may lead to additional penalties available under the California Private Attorneys General Act (PAGA).

With the rebuttable presumption created by the *Donohue* decision, the complex calculations imposed by *Ferra*, and now the expanded liability for penalties under *Naranjo*, California employers should ensure that their meal and rest break practices include at least the following:

1. Well-written policies providing and permitting meal and rest breaks;
2. Documented training of supervisors and employees to ensure those policies are followed;
3. Prompt identification and investigation of potentially noncompliant meal and rest breaks;
4. A reliable record whenever an employee confirms that a break was short, late, or missed voluntarily, rather than because of employer interference with the break;
5. Payment of the appropriate premiums when warranted;
6. Correct calculation of the regular rate of pay, incorporating all applicable forms of nondiscretionary compensation;
7. Accurately reporting such premiums on employee wage statements; and

8. Timely payment of all such premiums upon termination of employment.

Although the *Naranjo* decision was limited to the context of wage statement and final payment obligations under Labor Code Sections 226 and 203, one could reasonably anticipate plaintiff employees to argue that meal and rest premiums are also wages for purposes of other comparable statutes, such as timely payment of wages during employment under Labor Code Section 210.

This trifecta of California Supreme Court decisions specifically addressing meal and rest break laws reinforces the importance not only of compliance, but also accurate recordkeeping that will prove compliance in response to commonly filed class actions and PAGA actions. California employers should revisit their meal and rest period policies and practices, including providing compliant breaks and paying meal and rest break premiums and maintaining accurate records to prove compliance. If you have questions, please contact a [Troutman Pepper Labor + Employment attorney](#).

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