



Second Meal Period Waivers Invalid for Health Care Workers when Working more than 12 Hours

02.12.2015 | By [Veronica M. Gray](#)

In *Jazmina Gerard v. Orange Coast Memorial Medical Center*, the California Court of Appeal held that the wage orders health care companies have been following for years were wrong and contrary to the California Labor Code.

Three health care workers sued their hospital employer in this putative class and private attorney general enforcement action for alleged Labor Code violations and related claims. Their primary contention was that the hospital's policy **illegally** let health care employees waive their second meal periods on shifts longer than 12 hours.

Labor Code section 512(a) requires two meal periods for shifts longer than 12 hours. On the other hand, Industrial Welfare Commission (IWC) Wage Order No. 5 authorizes employees in the health care industry to waive one of those two required meal periods on shifts longer than 8 hours. Thus, pursuant to Wage Order No.5 and meal period waivers, Plaintiffs all signed second meal period waivers and occasionally worked shifts longer than 12 hours without being provided a second meal period.

The principal issue was whether the IWC order was valid. The Court concluded that the IWC exceeded its authority and declared section 11(D) of Wage Order No. 5 **partially invalid** to the extent it authorizes health care workers to waive their second meal periods on shifts longer than 12 hours because it was in **direct conflict** with Labor Code section 512(a).

The next issue the Court addressed was to what extent would its decision be retroactive. [As a general rule, judicial decisions are given retroactive effect, even if they represent a clear change in the law. However, there is an exception when considerations of fairness and public policy are so compelling that they

outweigh the considerations that underlie the basic rule; e.g., when a party justifiably has relied on the former rule.]

Here, the Court held that with one exception, it would not opine on the potential liability of the hospital for violations of section 512(a) committed before its decision and remanded that issue to the trial court. The one exception was that the hospital would have to pay plaintiffs' premium wage claims based on Labor Code section 226.7(c) since the law was clear that employers were required to provide health care workers with a second meal period when they worked more than 12 hours in a day.

The issue, then, is not whether the hospital was on notice its failure to provide the required second meal periods was unlawful—it surely was—but whether it is somehow unfair to apply to hospital the particular remedy specified in section 226.7 for its actions prior to our decision today.

The Court concluded [h]aving received the benefit of its employees working without the statutorily mandated second meal periods, there is nothing unfair about requiring hospital to compensate them for that time in accordance with the formula prescribed by the Legislature.

Best Practices

Employers (especially those in the health care industry) should review their meal and rest period policies and ensure they are compliant with California statutes and court decisions as this one.