California Supreme Court Prohibits "On Call" Rest Breaks For Employees

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In its recent *Augustus v. ABM Security Services, Inc.*, decision, the California Supreme Court held that employers may not require their employees to be "on call" during their rest breaks, and specifically that the employees may not be required to carry pagers and other communication devices.

ABM Security required its security guards to carry pagers during their rest breaks in case they needed to be called back to duty. There was no evidence in the record that any employee had actually been summoned to work under the policy. Nor any evidence of how quickly guards were expected to respond if they did get the call, nor of any discipline faced for failing to respond. It was also undisputed that if a guard were called back to duty, he or she would have been permitted a full rest period after the situation was resolved.

Jennifer Augustus, who represented a class of security guards, filed a motion for summary adjudication of the rest period claims. The trial court granted the motion, and awarded damages to the plaintiffs of approximately $90 million.

The Supreme Court affirmed this judgement, making a categorical ruling that "employers relinquish any control over how employees spend their break time, and relieve their employees of all duties -- including the obligation that an employee remain on call. A rest period, in short, must be a rest period."

The dissent argued that the bare requirement to carry a phone or pager does not constitute "work" in any relevant sense and that such an "on call" requirement without more is not incompatible with the employer's obligation to provide off-duty rest periods. The dissent also suggested that the matter be returned to the lower courts to determine whether ABM's policy, as applied, crossed the line (similar to a previous case where security guards were required to actively observe during their purported breaks). But the majority declined and instead adopted a categorical approach.

Accordingly, employers should review their policies to ensure that any "on call" requirements for rest periods are eliminated.

If this presents a problem for any particular employer or industry, the employer may apply to the Department of Industrial Relations for an exemption. But these requests may trigger a full investigation of the employer's practices by the DLSE and should not be taken lightly.

An employee may certainly be tracked down and brought back to work during an emergency or for unexpected circumstances, and provided a rest break afterwards (provided these interruptions are infrequent). The take away is that the employer now clearly shoulders the burden of locating the employee; the employee may not, as the Supreme Court put it, be "tethered" to a mobile phone.

Should you have any questions about this or any other employment matter, Christopher A. Lilly may be reached at (310) 789-1265 or cal@troygould.com.