

Publications

Labor and Employment Alert: Washington State Supreme Court Holds that Missed Rest Breaks May Result in Overtime Liability

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In *Washington State Nurses Association v. Sacred Heart Medical Center*, the Supreme Court of Washington held that when employees miss a legally mandated rest break, both the missed rest break and the additional labor provided during that missed break constitute "hours worked." In effect, missing a rest break extends the employees' workday, which may entitle them to overtime compensation under Washington law.

In its lawsuit, the Washington State Nurses Association sought overtime pay under the state Minimum Wage Act for work performed by the registered nurses during their missed breaks. Relying on an administrative regulation that requires a ten minute paid rest period for every four hours worked, the registered nurses argued that their workday was extended when they failed to get their legally mandated rest break, and therefore, they were entitled to overtime compensation for the first ten minutes of each fifteen minute rest period they missed (the nurses collective bargaining agreement provided for a fifteen minute rest break).

Noting that the case hinged on how "hours worked" was calculated, the Supreme Court of Washington held that both the missed opportunity to rest and the additional labor the nurses provided during the missed rest period constituted "hours worked." In reaching this conclusion, the Washington Supreme Court relied on its prior decision in *Wingert v. Yellow Freight Systems, Inc.* where the Court noted that if employees are not provided their mandated rest break, their workday is extended by ten minutes. Therefore, a nurse who works an eight hour day, but misses one rest break actually works the equivalent of 8.25 hours. This additional .25 hours of "hours worked" extended the nurse's workweek beyond forty hours a week, which triggered the overtime provisions of the Minimum Wage Act. Under this analysis, the registered nurses were entitled to overtime compensation for the first ten minutes—**the length of the break period mandated by Washington law**—of each break they missed.

In light of this decision, employers in Washington must be vigilant in ensuring that their employees take their legally mandated rest breaks. If an employee fails to take a rest break, his or her workday is deemed to be extended, which as in *Washington State Nurses Association*, can result in liability for overtime if the employee works over forty hours in the workweek.

While the applicable administrative regulation relieves an employer of providing a scheduled rest break when the nature of the employee's work permits the employee to take intermittent rest breaks equivalent to ten minutes for every four hours worked, relying on this procedure creates practical difficulties for employers. In particular, without a scheduled break, it is harder to ensure that employees are getting their legally mandated breaks. Further, an employer facing a lawsuit for failure to provide rest breaks who argues that the employee took intermittent rest breaks, will have difficulty proving that the employee actually received those breaks.

Employers should also note that, unlike California, whether an employee voluntarily waives his or her rest break is irrelevant. If an employee misses his or her rest break **for any reason**, the workday is extended. At this time, it is uncertain if and how this decision may affect meal breaks.

For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.