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While Rounding Time Entries Can Be Permissible for Working Hours, the California Supreme Court Has Now Held It Is Not Permissible for Break Time

California law generally requires that employers provide nonexempt employees an uninterrupted nonworking 30-minute meal period to begin before the end of the fifth hour of work. These requirements apply even if the employee works remotely, though the obligation is only to *provide* meal periods and not to police meal periods. In *Donahue v. AMN Services, LLC*, \_\_\_ P.3d \_\_\_, 2021 WL 728871 (Cal. 2021), the California Supreme Court clarified California's meal period obligations in the context of remote work. The case concerned a healthcare service and staffing company that employed nurse recruiters who helped place individuals for contract assignments. AMN provided meal periods to its nonexempt recruiter employees, but its timekeeping system rounded entries to the nearest 10-minute increment. The practical result was that some employees took meal periods that were less than 30 uninterrupted minutes, but the time system treated the short meal breaks as compliant.

AMN moved for summary judgment, relying on long-standing case law holding that rounding time entries can be permissible when the practice more often inures to the employees' benefit. In granting summary judgment, the lower court found that these same principles should apply to rounding in the context of nonworking break periods, particularly in the absence of evidence the employer prevented employees from taking compliant meal periods. The appeals court affirmed summary judgment, further focusing on the fact that AMN's rounding policy was facially neutral and that the employer had procedures in place for employees to confirm the accuracy of their timesheets and to report meal period violations, though the named plaintiff did neither.

In reviewing the lower courts' holdings, the U.S. Court of Appeals for the Ninth Circuit found that the focus on whether the employees' compensable time was "shorted" by the rounding practice was not the right inquiry. Rather, the question was whether AMN's rounding practice resulted in a failure to pay meal period premiums that would otherwise have been due. Even a minor infringement would trigger a penalty, so the rounding practice obscured instances where penalties would otherwise have been payable and denied employees of timely and complete meal periods. Moreover, while the rounding practice led to some additional minutes of regular pay, it also denied employees a full hour of premium pay for short breaks that were misrepresented as compliant in the time records—a balance that did not, in fact, level out over time.

The *Donahue* case is the first time the Ninth Circuit has considered rounding practices in the context of break penalties. If a business currently uses a time system that applies rounding, it would be a good time to consider the advisability of continuing to do so.

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