

**May 23, 2008**

## **EMPLOYMENT ALERT**

### **Supreme Court Overturns Decision That Allowed Employees to Sue for Wages for Missed Rest Periods**

In *Gafur v. Legacy Good Samaritan Hospital and Medical Center*, plaintiffs brought a class action lawsuit alleging that their employer owed them wages for missed rest periods. The trial court dismissed plaintiff's complaint and Plaintiffs appealed. Approximately one year ago, the Oregon Court of Appeals issued a decision in which the Court agreed with plaintiffs' argument that the Bureau of Labor and Industries' (BOLI's) administrative rule on rest breaks, OAR 839-020-0050(1)(b), entitles employees to four hours pay for every three hours and 50 minutes worked. The Court of Appeals also agreed with plaintiffs that, under ORS 653.055, an employee has a right to sue for unpaid wages if the employee is not given the rest breaks required by the BOLI rules.

The case was appealed to the Oregon Supreme Court. On May 15, 2008, the Supreme Court issued its opinion reversing the decision of the Court of Appeals. The Supreme Court held that, although employers are required to provide minimum rest breaks, a violation of that requirement does not give rise to a claim by the employee for unpaid wages. The Court concluded that an employee who takes a rest break does not stop working for wage and hour purposes. In reaching this conclusion, the Court reasoned that an "employee who works four hours and takes a 10 minute rest break within that four-hour period 'works' the same amount of time (for wage and hour purposes) as an employee who works four hours and does not take a rest break. In each circumstance, the employee is entitled to four hours pay and no more."

Even though the Supreme Court has overturned the Court of Appeals' decision and has ruled that employees cannot sue for unpaid wages for missed rest breaks, BOLI still has administrative authority to enforce its rules regarding meal periods and rest breaks. BOLI's enforcement authority includes the authority to impose penalties of up to \$1,000 per violation and the authority to issue an injunction against the employer. Therefore, employers need to continue to comply with BOLI's rules on meal and rest breaks.

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### **Action Plan**

When we informed you of the Court of Appeals' decision approximately a year ago we suggested an Action Plan to support employer compliance with BOLI's rest and meal breaks rule. That plan remains applicable:

- Require employees to take rest breaks as required by law. Inform supervisors that, under the law, employers have an affirmative obligation to ensure that employees actually receive rest breaks as required by law.
- If you do not already have a written break and meal periods policy, develop one and communicate it to employees.
- If your operations prevent you from maintaining regularly scheduled meal or rest break periods, contact counsel for advice.
- Use a Final Paycheck Acknowledgment form when feasible. The form should provide a breakdown of the components of the final paycheck (wages, vacation pay, other), contain an acknowledgment of receipt of the final paycheck and contain an acknowledgment by the employee that, to the best of his/her knowledge, there is no additional money owed to the employee by the employer at that time.

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