

State Supreme Court rules on rounding errors

By Dan Eaton

March 15, 2021 | 6:00 AM PT

The California Supreme Court has ruled an employer cannot round the time an employee spends on their meal break to the nearest preset fraction of an hour. The court further held that time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations.

Meal Breaks: The Basics

A California employer generally must provide nonexempt employees with the opportunity to take an uninterrupted 30-minute unpaid meal period no later than the end of the fifth hour of work. Employees may not be discouraged from taking their meal period and must be relieved of all duty.

Where an employee's meal period is involuntarily missed, delayed, or shortened, the employee must receive one hour of premium pay at the employee's regular hourly rate. An employer need not police the meal period to keep an employee from choosing to work during their break. The employer need only ensure it provides its employee the opportunity to take a bona fide timely break from duty and that this is accurately reflected in the employer's time records.

Facts of *Donohue v. AMN Services, LLC*

Kennedy Donohue was a recruiter in the San Diego offices of AMN Services, a staffing company. AMN provided recruiters with a facially compliant meal period. Supervisors were instructed not to discourage meal breaks.

During Donohue's employment, AMN's timekeeping system rounded the employee's punched starting and ending meal period times to the nearest 10-minute increment. Where records showed a missed meal period, a meal period under 30 minutes, or a meal period after five hours of work, AMN paid the employee one hour of premium pay, unless the employee indicated on a dropdown menu she was provided a meal period before the end of her fifth hour but chose not to take it or that she was provided with the opportunity to take a 30-minute break before the end of her fifth hour of work but chose to take either a shorter or later break.

The dropdown menu was not triggered where the time recorded, as rounded, indicated a compliant meal period. For example, a meal period that started at 12:02 p.m. and ended at 12:25 p.m. would be recorded as having started at 12:00. and ended at 12:30 so the employee would not be prompted to indicate a meal period violation.

Employees certified the accuracy of their time records at the end of each pay period. Donohue never indicated a meal period violation on the timekeeping system and always certified her timesheet.

After leaving AMN, Donohue sued the company on behalf of herself and other current and former AMN recruiters, alleging AMN's meal break policies were unlawful. The trial court summarily ruled in AMN's favor. The court of appeal affirmed.



The case of *Donohue v. AMN Services* (San Diego Union-Tribune)

The California Supreme Court's Ruling

The California high court reversed, concluding the precision of California meal break scheme, penalizing even slight time deviations, is inconsistent with the inherent imprecision of rounding.

The court acknowledged the California Division of Labor Standards Enforcement, California federal courts, and lower state appellate courts have approved employer rounding of total hours worked where a company's policy is facially and operationally neutral. Assuming, without deciding, rounding total hours worked is allowed, the court noted key differences in California's regulation of meal periods.

For one, the focus of meal period regulations is protecting worker health and safety, not ensuring proper wages. "[F]ailing to provide employees with full and timely meal periods burdens their health, safety, and well-being by aggravating risks associated with stress or fatigue" And missed or late meal period time, unlike undercounted work time, cannot be made up.

The court additionally held that time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations. "Employers can rebut the presumption by presenting evidence that employees were compensated for noncompliant meal periods," including receiving premium pay, or that employees had been provided compliant meal periods during which they chose to work.

The court added that AMN employees' certifications, that that they had been provided the opportunity to take all meal breaks to which they were entitled or had reported on their time sheets if they had not, may not preclude liability. If employees would not have known about potentially noncompliant meal periods that AMN's timekeeping system did not flag unless employees kept their own records, then the certifications would be inaccurate and unusable to prove there were no meal period violations. Keeping accurate time records is the employer's responsibility.

Dan Eaton is a partner with the San Diego law firm of Seltzer Caplan McMahon Vitek where his practice focuses on defending and advising employers. He also is an instructor at the San Diego State University Fowler College of Business where he teaches classes in business ethics and employment law. He may be reached at eaton@scmv.com. His Twitter handle is [@DanEatonlaw](https://twitter.com/DanEatonlaw).