



# California Supreme Court: California Prohibits On-Duty And On-Call Rest Periods

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## ***Augustus v. ABM Security Services, Inc.***

On December 22, 2016, the California Supreme Court in *Augustus v. ABM Security Services, Inc.*, ruled that California law prohibits on-duty and on-call rest periods.

You may recall that in July of 2012, a Los Angeles trial court awarded a class of more than 14,000 security guards almost \$90 million in statutory damages, interest, and penalties against their employer for violating California law by requiring the security guards to carry radios or pagers while on their rest breaks.

The Supreme Court addressed whether: (1) employers must permit their employees to take off-duty rest periods under California Labor Code section 226.7 and Wage Order 4; and (2) employers may require their employees to remain on-call during rest periods. The Supreme Court decided that ABM's requirement that its guards carry a communications device or otherwise remain reachable in case of emergency, standing alone, is incompatible with ABM's legal obligation to provide a rest period.

### **Off-Duty Rest Periods**

With respect to off-duty rest periods, the Court concluded that the construction of Wage Order 4, subdivision 12(A) that best effectuates the order's purpose and remains true to its provisions is one that obligates employers to permit—and authorizes employees to take—off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.

### **On-Call Rest Periods**

With respect to on-call rest periods, the Court concluded that they are impermissible, reasoning that one cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to

particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods.

Even though the record showed that rest periods were rarely interrupted, and that this on-call requirement was tied to the nature of work as a security guard, the Court held that the on-call requirement invalidated the rest periods and was irreconcilable with the employees' retention of freedom to use rest periods for their own purposes.

Notably, four justices concurred with Justice Cuellar's opinion. Justice Leandra Kruger wrote a concurring and dissenting opinion stating that the court should reverse and remand for further consideration about the specific on-call policy: Thus, while I agree with the majority that an employer must relieve employees of their duties during rest breaks, I see no adequate basis for upholding a \$90 million judgment that was premised on the incorrect assumption that a person who is 'on call' — that is, who has been required to carry a radio, pager, or phone, or to otherwise remain reachable in case of emergency — is necessarily also 'on duty.'

### **Best Practices**

The Augustus decision is a wake-up call for employers to evaluate their break period policies and practices (meal and rest) to ensure they are legally compliant and consistent with the California Supreme Court's restrictive interpretation in favor of employees.

Nossaman can assist employers in reviewing/auditing employers' current wage and hour policies and procedures to ensure compliance. Nossaman provides client-focused, high caliber legal services that exceed our clients' expectations while staying within their legal budgets. Our employment attorneys provide litigation, counseling, advice, and training services to private and public companies and public entities throughout California, as well as meeting their out-of-state-needs. The scope of our representation runs the full gamut from prosecuting misappropriation of trade secrets to defending wrongful termination claims (discrimination/harassment/public policy) and wage and hour class actions. We have also been on the front line of e-discovery, privacy rights, cybersecurity, data breach and workplace violence. We stay on top of emerging employment issues and are well prepared to counsel our clients on how to address and control related issues.