

VIOLATION LAWSUITS ON THE RISE: REST & MEAL PERIODS AND OVERTIME COSTING EMPLOYERS MILLIONS

Today, there are over 100 pending lawsuits involving rest and meal periods in California. In the last six months alone, employers have paid millions of dollars in back wages and penalties.

Failing to classify positions properly and keep accurate records has never been more costly. Below are just a few of the class action settlements.



TAKE THE TIME TO KEEP THEIR TIME

Many employers have lost lawsuits simply because they did not have documentation proving that employees did, in fact, take rest and meal breaks. Employers are required by law to keep accurate records of an employee's hours of work and compensation. They must make sure that employees are recording when each work period and off-duty meal period begins and ends every day that they work. There are two standard methods of capturing and keeping time records:

TIME SHEET This is the old fashioned paper form an employee must complete daily, including writing in and out times for meal breaks. It's important that management never alter or enter any data on the time sheet as it may negate its accuracy. Employees must sign off on the time sheet every pay period and records should be kept for three years. With a manual form, over-time, double-time, two hour minimum, and other pay differentials have to be totaled manually. More importantly, employers must review them regularly to ensure that employees are taking meal periods between the 5 & 6th hour.

TIME CLOCK With computerized time clocks, employees must still clock in and out of work and meal periods, and only they can make changes to their recorded time. However, automated systems make computing time much easier as employee time information is collected in a database that has all State and Federal rules for pay rate calculation built in. This data is then reviewed and approved by a manager for payroll processing and custom reports. Aside from providing a valuable management tool, electronic timekeeping systems help protect employers from fraudulent meal and rest period violation claims. Reports can also be generated at any time to make sure employees are taking and/or recording their meal breaks on a timely basis.

Whether a sophisticated time clock system or a manual system is used, it is the employer's responsibility to abide by all State and Federal wage and hour regulations. In the absence of hard evidence to support compliance, California courts will veer in favor of the employee.

| EMPLOYER / LAWSUIT | AWARD | COMPLAINT |
|---|--|---|
| Abercrombie & Fitch January, 2006 | \$2 Million | Improper exempt classification of store managers, whose duties entitled them to overtime pay. |
| Wal-Mart December, 2005 | \$172 Million | Rest and meal periods denied and undocumented. |
| Guitar Center, Inc. December 2005 | \$3. 5 Million | Improperly documented and enforced break time and lunch time periods. |
| Gymboree Corporation November 2005 | 2.3 Million | Violations of California wage & hour law. |
| Electronic Arts October 2005 | \$15.6 Million | Improper exempt classification of employees owed for 60- to 85-hour workweeks. |
| Allstate Corp. September 2005 | \$120 Million | Refused to pay overtime to its adjusters, but routinely assigned them so many claims that they had to work nights and weekends. |
| The Cheesecake Factory Three separate cases pending in San Francisco and Los Angeles. September 2005 | Pending: 4.5 Million reserved. Plaintiffs' attorneys are hoping for a class action suit worth 10 – 20 million. | Violation of Rest and Meal Periods. Employees were not being allowed to take their rest and meal periods. |
| Bank of America September 2005 | \$8.93 Million | Failure to pay California loan department employees who claim the company failed to pay them overtime, paying them solely on commissions. |
| Red Lobster & Olive Garden Irvine, CA, June, 2005 | \$9.5 Million | Rest and meal periods denied and undocumented. |
| Ivy Hill Corporation June, 2005 | Pending: sent back to District Court for rehearing | The court ruled that union employees were protected under the California law and entitled to rest and meal periods. |

Find out what HR Ideas can do to help you avoid wage and hour violations. Call us at 925.556.4404, or see us online at HRIdeas.com.

