

# Law Report

LEGAL NEWSLETTER

VOLUME 8, ISSUE 1

## MURPHY'S LAW REVISED: EMPLOYERS EAT IT FOR MISSED MEAL AND REST PERIODS

*California Businesses Can Be Liable for Three Years' Worth of Violations*

Class action law suits over payroll mistakes are still on the rise. California employers who have perhaps overlooked basic points on wage payments and calculations can face enormous defense costs, settlements and judgments if such errors are repeated over time with a large workforce. For example, United Parcel Service just settled an action for upwards of \$87 million on allegations the company had failed to grant its drivers proper meal and rest breaks.

Until recently, California appeals courts had conflicting views on the adverse consequences to employers for failure to provide required meal breaks or rest periods. Some courts only allowed such claims to reach back one year from the date of the suit; others permitted a three-year limit. The state supreme court's April, 2007 ruling, siding with the three-year logic, could cost California businesses millions of dollars. *Murphy v. Kenneth Cole Productions, Inc.* (April 16, 2007) 40 California Reports Fourth Series (Cal.4th) 1094, 155 Pacific Reporter Third Series (P.3d) 284.

**The Trouble Begins:**  
**John Murphy's Employer Misclassified Him as Exempt from Overtime:** John Paul Murphy worked as a store manager at one of Kenneth Cole's men's retail clothing stores from June 2000 until June 2002. Kenneth Cole classified him as a salaried, exempt-from-overtime employee and paid him a

weekly salary. Murphy worked shifts lasting between nine to ten hours in length. Although considered a salaried manager immune from overtime pay, he often spent his time working alongside the store sales attendant performing non-managerial work, such as selling merchandise, transferring product, labeling markdowns, and cleaning the store. Murphy would often eat meals in the store's back office as he worked on human resources paperwork and reviewed work-related emails. He rarely had the opportunity to take rest periods.

After Murphy resigned from Kenneth Cole, a friend advised that employer had not paid him properly, motivating Murphy to file a wage claim with the Labor Commissioner for unpaid overtime. The Labor Commissioner decided Kenneth Cole had misclassified Murphy as exempt from overtime and that the company had failed to pay him 1.5x or 2x for his extra daily or weekly hours. The employer appealed the decision to the San Francisco Superior Court. There, Murphy added Labor Code section 226.7 claims for missed meal and rest period violations.

Labor Code section 226.7 states: "No employer shall require any employee to work during any [required] meal or rest period.... If an employer fails to provide an employee [such] a meal period or rest period..., the employer shall pay the employee one additional hour of pay at the

employee's regular rate of compensation for each work day that the meal or rest period is not provided." The battle in the *Murphy* case became whether that "one hour" assessment fit the legal definition of "wage," thus subject to a three-year statute of limitations, or of a "penalty" subject to only a one-year statute of limitations.

***California employers who have overlooked basic points on wage payments and calculations can face enormous defense costs, settlements and judgments***

The trial court interpreted Labor Code section 226.7 payments as "wages" subject to a three-year statute of limitations and thus awarded Murphy payments for missed meal and rest periods dating back to the commencement of his employment.

Kenneth Cole again appealed, alleging it had properly classified Murphy as an exempt worker and that the one-year statute of limitations for "penalties" applied to meal and rest period violations. The Court of Appeal agreed with Kenneth Cole, reversing the trial court and limiting Murphy's recovery to one year's worth of missed meals and breaks.

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## SEXUAL HARRASSMENT SEMINARS

*Unlawful Harassment Seminars Available for All Employers*

All supervisors in companies with 50 or more employees or independent contractors must receive mandatory sexual harassment prevention training every other year. For those of you coming up on your two-year re-training requirement, please contact our office for preferred scheduling of your next training seminar. This year's line-up will include updated case law, as well as new quizzes and practical scenarios.

Our currently scheduled sexual harassment prevention seminars are:

- Thursday, July 12, 2007 in Burbank, 1:00-3:30 PM
- Thursday, August 16, 2007 in Pasadena, 1:00-3:30 PM
- Friday, September 14, 2007 in Anaheim, 1:00-3:30 PM
- Thursday, October 18, 2007 in Pasadena, 1:00-3:30 PM
- Friday, November 16, 2007 in Anaheim, 1:00-3:30 PM

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*The Law Offices of Timothy Bowles work primarily in employment and health care fraud law; mediation; arbitration; and civil litigation. While published articles convey the firm's views on topics it has found concern many of its clients, the articles are not intended and should not be considered legal advice. Such professional advice requires full disclosure to an attorney of a client's circumstances and that attorney's opportunity to analyze those circumstances against applicable law.*

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To register, please visit our website at [www.tbowleslaw.com](http://www.tbowleslaw.com) or contact our office directly at 626-583-6600.

"On-Site" Seminars:  
Alternatively, we will travel to your company to conduct an in-house seminar at your convenience. Please call for a quote.

### **"MURPHY'S LAW"** Continued from page 1

***The Trouble Multiplies:  
Employer Gets to Pay for Three  
Years of Lost Meals:*** Mr. Murphy then appealed to the Supreme Court of California. That court found Labor Code section 226.7 ambiguous and thus consulted the administrative and legislative history of that statute, concluding the legislature had intended "additional hour of pay" to mean "wages" to compensate employees instead of a "penalty" intended to punish employers for failing to pro-

vide these meal and/or rest breaks. Thus, the Supreme Court reversed again, holding Kenneth Cole responsible for up to three years of missed meals and breaks.

***California employers  
are potentially  
exposed to employee  
claims for even  
innocent inattention  
to meal and rest  
period requirements***

***The New Murphy's Law: Pay  
Twice for Three Years Running:*** The *Murphy* decision thus triples a California employer's potential exposure for even innocent inattention to meal and rest period requirements. A business must provide an unpaid meal period of at least 30 minutes for every five hours worked. An employer must also permit workers to take ten-minute mid-point rest breaks

for every four hours worked. An employer must also maintain proper written policy as well as accurate and reliable timekeeping procedures to verify that hourly employees are in fact taking their meal breaks. Meal and rest periods must be *uninterrupted*, with businesses to honor employee rights to leave the work premises during any such break.

An employer may consider it fair that it has paid an hourly employee for having worked through lunch. The irony is that employer potentially must pay twice or more for that fairness, since failure to provide an unpaid, minimum 30-minute meal period incurs an additional liability to the employee of an extra hour of pay.

The *Murphy* decision underscores that employers must be proactive on legal compliance. Companies should periodically review the accuracy of their exempt-from-overtime classifications – preferably using audit procedures designed and imple-

mented by legal counsel. Businesses must ensure their written workplace policies and practices are current. Management must thus be alert to and correct hourly employees who are doing the business "a favor" by voluntarily skipping their meal or rest breaks. ■

### ***New Federal Minimum Wage Requires New Notice Posting***

**P**resident Bush signed a bill recently increasing the federal minimum wage three times over the next two years. Despite these increases, California's minimum wage will still be greater than the federal minimum wage and California employers need to continue paying California's minimum wage. Please see <http://www.calchamber.com/HRC/News/LaborLawArticles/WhatsNew/FederalMinimumWageTracker.htm> for more details. ■