

## California Supreme Court Rules That Unpaid Break Premiums May Give Rise to Derivative Penalties

May 25, 2022

### Key Points

- On May 23, 2022, in *Naranjo v. Spectrum Security Services, Inc.*, the California Supreme Court held that a failure to provide premium pay for meal or rest break violations under California Labor Code § 226.7 may give rise to derivative liability for failure to pay final wages and failure to provide accurate wage statements.
- The final pay and wage statement statutes provide steep monetary penalties to a plaintiff who is able to prove the elements of those claims, so the *Naranjo* decision could significantly increase the potential exposure to defendants in some meal and rest break cases that do not otherwise include wage claims.
- A plaintiff seeking final pay or wage statement penalties must still prove the elements of those claims, including that a failure to provide an accurate wage statement was “knowing and intentional.” That showing may be difficult as a practical matter in current cases, considering that employers’ obligation to report break premiums on wage statements was unclear.

On May 23, 2022, the California Supreme Court held in *Naranjo v. Spectrum Security Services, Inc.*, Case No. B256232, that a failure to pay meal and rest break premiums can give rise to derivative liability for failure to provide accurate wage statements and failure to provide final pay.

In *Naranjo*, the plaintiff brought class claims alleging that his former employer failed to provide proper meal breaks. Labor Code § 226.7(c) provides that an employer who fails to provide a compliant meal or rest break must compensate the employee with an additional hour of pay. The issue before the Court was whether this premium pay should be considered “wages” that must be reported accurately on wage statements (Lab. Code § 226) and timely paid upon termination of employment (Lab. Code §§ 201-203). The Court held that break premiums **are** wages under the final pay and wage statement statutes. Therefore, an employer who fails to pay break premiums may be subject to derivative liability under Labor Code § 203 for failing to timely pay final wages (up to 30 days’ pay), and under Labor Code § 226(e) for failing to provide accurate wage statements (\$50-100 per pay period, to a maximum of \$4,000 per employee).

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In reaching its decision, the Court rejected the Court of Appeal's reasoning that break premiums are a "legal remedy, not payment for labor." Slip op. at 8. The Court noted that such a conclusion "rest[ed] on a false dichotomy: that a payment must be either a legal remedy or wages." *Id.* at 9. Instead, the Court reasoned that break premiums were both a legal remedy **and** wages because "an employee becomes entitled to premium pay for missed or noncompliant meal and rest breaks precisely because she was required to work when she should have been relieved of duty." *Id.* In reaching this conclusion, the Court compared break premiums to overtime premium pay, which serves the dual purpose of compensating employees for work and deterring employers from routinely imposing overtime obligations on employees. *Id.* at 10. The Court also cited its 2007 decision, *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1099, 1103-14 (2007), in which the Court concluded a three-year limitations period applied to meal break claims because "the Legislature intended for the section 226.7 payment to constitute wage compensation and not a penalty." Slip op. at 12. The Court distinguished *Kirby v. Immoos Fire Protection, Inc.*, 53 Cal. 4th 1244, 1255 (2012), in which it held in the context of a fee-shifting statute for actions for "nonpayment of wages" that "a section 226.7 action is brought for the nonprovision of meal and rest periods, not for the 'nonpayment of wages.'" It explained that "*Kirby* did not reject or limit *Murphy's* characterization of Section 226.7 premium pay as compensation for labor." Slip op. at 17.

The practical effect of *Naranjo* makes meal and rest break claims potentially more valuable in cases that do not otherwise include wage claims. However, a plaintiff seeking to prove derivative final pay or wage statement still must prove all the elements of those claims, including that any failure to pay final wages was "willful" (Lab. Code § 203) and that the employer "knowing[ly] and intentional[ly]" provided an inaccurate wage statement (Lab. Code § 226). This could make derivative wage statement claims, in particular, challenging to prove. Because employers' obligations to list break premiums on wage statements was unclear prior to the California Supreme Court's decision, defendants may have a compelling argument that any failure to do so was not "knowing and intentional."

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