

A Long Term Care and Senior Housing Law Update

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The Most Important Ten Minutes: The Oregon Court of Appeals Creates a Private Right of Action for Missed or Short Rest Breaks

The Oregon Court of Appeals has decided that an employee has a private right of action against an employer for unpaid wages if the employer fails to provide paid *rest breaks* to the employee as required by Oregon law. However, the employee does not have a private right of action against the employer for failure to provide unpaid *meal breaks*.

In *Gafur v. Legacy Good Samaritan Hospital and Medical Center*, 213 Or.App. 343, 161 P.3d 319 (2007), the plaintiffs brought claims against their employer for regular and penalty wages based on allegations that the employer failed to provide paid rest breaks and unpaid meal breaks. The plaintiffs also alleged a breach of contract claim based on the theory that mandatory meal and rest breaks were inherent in their employment contract.

Oregon law requires an employer to provide rest and meal breaks for its employees. Employers must provide an unpaid 30-minute meal break and paid ten-minute rest breaks based on the number of hours worked by the employee.

The plaintiffs alleged that because Oregon Administrative Rules entitle them to paid ten-minute breaks for every four hours (or major fraction thereof) worked, and they did not receive those breaks, the employer paid them less than the wages to which they were entitled. The Oregon Court of Appeals held that this allegation, if proved, would establish the employer's liability to its employees and create a private right of action.

As for meal breaks, the Court of Appeals disagreed with the plaintiffs' argument. Reasoning that because Oregon law does not require an employer to provide paid meal breaks, only unpaid meal breaks, there was no failure to pay wages. The court left open, however, the question of whether an employee has cause of action for breach of contract on the theory that meal and rest breaks mandated by law are inherent in the employment contract.

What *Gafur* Means for Employers.

The *Gafur* decision is significant for employers. It stands for the proposition that employees who do not receive paid rest breaks, as required by Oregon law, may sue their employer to recover the wages they were not paid for during the extra time worked. More importantly, the decision means that an employee who has not received lawful rest breaks—and quits or is terminated—

may have a claim for failure to pay wages at termination. This penalty can amount to 30 days wages for that employee (eight hours a day x 30 days).

Employers must ensure that its employees are aware of their rest break rights and have the opportunity to take their lawful rest breaks. Anything less will expose employers to wage claims and penalties.

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