



April 8, 2005

### **Help Is On The Way: The DLSE Publishes Modified Meal And Rest Period Regulations**

Finally, meal and rest period regulations for California employees are just around the corner. On April 6, 2005, the California Division of Labor Standards Enforcement ("DLSE") posted notice of modifications to its proposed meal and rest period regulations and, by way of that notice, commenced the 15 day public comment period on the regulations. The public comment period will be open until April 22, 2005, after which the DLSE will adopt final regulations.

The modified regulations mark the culmination of a heated battle raging between employers, unions, lawyers, the DLSE, and the courts for quite some time now. On December 20, 2004, the DLSE proposed regulations that were designed, among other things, to clarify the Labor Code provisions on meal periods. The DLSE held three public hearings on the proposed regulations in February and March and a written comment period that closed on March 2, 2005.

After holding public hearings and considering the comments it received, the DLSE published *modified* regulations on April 6, 2005. Significantly, the modified regulations retain the provision that the amount owed by an employer to an employee for failing to provide a meal or rest period is a penalty and not a wage. The modified regulations clarify what Labor Code Section 512 means when it says an employer must "provide" employees meal periods. "An employer shall be **deemed** to have provided a meal period to an employee in accordance with Labor Code Section 512 if the employer:

- a. Informs the employee of his/her right to take a meal period and the fact that he/she will suffer no retaliation for exercising this right;
- b. Affords the employee the opportunity to take the meal period; and
- c. Maintains accurate time records for covered employees, as required by Labor Code section 1174(d) and section 7, Records, of the Industrial Welfare Commission wage orders ...or otherwise establishes by a preponderance of evidence that the meal period was in fact actually provided to the employee..." [emphasis added.]

The proposal also provides examples that assist employers in determining when meal periods are due. The entire text of the proposed regulations, along with the original regulations and the history of the rulemaking, can be found at the California Department of Industrial Relations website, [www.dir.ca.gov](http://www.dir.ca.gov).

The foregoing is only a brief overview of some of the significant provisions of the modified proposal. As with any new development of law, employers should review the entire text of the modified regulations and consult an employment attorney with any questions. We would be happy to assist you in this respect and will continue to provide you with updates as this important area of the law develops.

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For more information about this issue, please contact a member of the Labor and Employment Practice Group in one of our offices.

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