

DLSE CHANGES POSITION ON REST BREAKS

In recently issued guidance, the California Division of Labor Standards Enforcement (the “DLSE”) has changed its position on two important issues pertaining to rest breaks. This reversal follows a 2016 decision of the California Supreme Court in *Augustus v. ABM Security Services, Inc.* While the guidance of the DLSE is not binding on the courts, employers would be prudent to consider the position of the DLSE in revising or drafting the rest period policies in their employee handbooks.

1. Employees cannot be required to stay on the work premises during rest periods.

The DLSE states that the right to leave the work premises is part of an employer’s obligation to permit and authorize employees to take off-duty rest periods. The DLSE notes, however, that “if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.”

2. An employer cannot require that employees keep in radio communications during a rest period.

The DLSE considers requiring employees to keep in radio communications during a rest period to be the same as an on-call rest period. The DLSE quoted from the *Augustus* opinion: “[O]ne cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods.” However, the DLSE notes that this principle is specific to rest periods (and off-duty meal periods), “and does not apply to other types of on-call issues such as on-call shifts or on-call meal periods, which are subject to different requirements and considerations.”

The full DLSE guidance can be found at http://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm

NLRB REVERSES RECENT PRECEDENT

The newly constituted National Relations Labor Board has reversed a number of significant legal standards, with more likely to come. Among the reversals are:

→ Joint Employment – The Board overturned the 2015 *Browning-Ferris* test, reverting to its previous “direct and immediate” control legal standard to establish joint employment.

→ Handbook Policies - The Board has gone back to a more rational standard for determining the legality of employee handbook policies. Under the new standard, the Board will exercise a more balanced approach, considering the “nature and extent” of the challenged rule’s effect on rights protected under the National Labor Relations Act against the “legitimate justifications associated with the rule.”

→ Bargaining Over Changes – Overturning a 2016 ruling, the Board restored previously established precedent that allows companies to change policies without bargaining with a union if similar actions were taken in the past.

→ The Board reversed a 2011 rule and restored more power to employer is establishing bargaining units.

For more information on meal and rest breaks, other wage and hour matters, or the effect of the new Board rulings, please contact:

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Our thoughts are with those impacted by the fires in California. We wish everyone a safe holiday season and all the best in the new year.