



## Washington Supreme Court Holds That Employees May be Entitled to Overtime Compensation For Missed Rest Periods

by Jennifer A. Prada and Laura L. Edwards

The Washington Minimum Wage Act (MWA) unequivocally requires employers to pay non-exempt employees overtime for all hours worked in excess of 40 hours in each workweek. Regulations issued by the Washington State Department of Labor and Industries (L&I Rest Period Regulation) are equally clear that employers must provide non-exempt employees with a paid 10-minute rest break for every four-hour period worked. Under such standards, an employer may likely believe that it has satisfied its legal obligations in circumstances where an employee misses a rest period during his or her scheduled 40-hour workweek yet is provided additional compensation for that time at his or her regular hourly rate. Not necessarily, says the Washington State Supreme Court. In a recently-decided opinion, the Supreme Court justices unanimously ruled that an employee who misses his or her rest period will be entitled to overtime compensation for the missed 10-minute break time if the "hours worked" exceed 40 hours in the week.

In *Washington State Nurses Association v. Sacred Heart Medical Center*, 2012 Wash. LEXIS 748 (Oct. 25, 2012), the Washington State Nurses Association (WSNA) union sued the employer hospital, Sacred Heart Medical Center (SHMC), for allegedly violating the MWA and L&I Rest Period Regulation by failing to pay approximately 1,200 registered nurses overtime for missed rest breaks. The Collective Bargaining Agreement (CBA) between the parties required that nurses be provided with 15-minute breaks for every four hours worked. The parties did not dispute that, when nurses missed their rest periods, SHMC provided them with 15 minutes of additional straight-time compensation but did not pay any overtime. For example, when a nurse worked through one 15-minute break while completing an eight-hour shift, s/he received the equivalent of 8.25 hours of straight pay for that day. The WSNA claimed, however, that nurses were entitled to overtime pay for 10 of the 15 minutes of each rest period they missed.

The case made its way through the court system with conflicting results. The trial court granted summary judgment for WSNA and awarded the nurses approximately \$330,000 in damages, including \$52,361 in double damages for what the court concluded was SHMC's "willful" violation of the MWA. The appellate court reversed, reasoning that, although the missed rest periods provided SHMC with "additional labor," they did not account for an extension of the nurses' workdays and therefore did not entitle the nurses to overtime.

The Washington State Supreme Court disagreed with the appellate court and reinstated the trial court's order awarding damages (although it reversed the award of double damages). The Court held that because an employee's 40-hour workweek is extended by 10 minutes whenever an employee misses a rest break, employees who work 40-hour workweeks may be entitled to overtime pay for their missed breaks. In so holding, the Court relied on its 2002 decision in *Wingert v. Yellow Freight Systems, Inc.*, 146 Wn.2d 841 (2002), in which it held that an employer's failure to provide a required 10-minute rest period extended the workday by 10 minutes. As such, the SHMC nurses' rest break time and additional labor time constituted "hours worked," thereby extending the nurses' workweek beyond 40 hours. By putting nurses in a situation where they could not take their breaks in violation of the L&I Rest Period Regulation, SHMC effectively authorized or required nurses to be on duty on its premises to perform the work equivalent to an overtime shift after the end of their normal workday. Even though the nurses did not physically remain past the time when they would normally go home, the Court ruled that SHMC could "not avoid its obligation to provide 10 minutes of 'hours worked' for rest or to treat time spent working as 'hours worked.'" Thus, the nurses were entitled to overtime under the MWA for the first 10 minutes of each break they missed.

**What the Decision Means.** According to the Court, missed breaks, to the extent required by law, constitute "hours worked." Although an employer may agree to give employees 15-minute rest breaks (which is not uncommon in many Collective Bargaining Agreements (CBAs)) the Court's decision only requires the first 10 minutes (*i.e.*, the portion required by law) to be counted as "hours worked" for purposes of awarding overtime. For employees who work a 40-hour work week, if total hours at the end of the week exceed 40, then overtime must be paid on the time worked in excess of 40 hours. Although not specifically discussed in *Sacred Heart Medical Center*, the Court's reasoning may apply with equal force to employees who work an 8/80 workweek under that healthcare option in which nurses receive overtime for working more than eight hours in a day, or 80 hours in a two-week period. For those employees, a missed break during an eight-hour shift will always constitute overtime.

**Practical Guidance for Employers.** As a first defense, employers should try to ensure that policies and practices are in place to encourage employees to take the breaks to which they are entitled. When missed breaks occur, employees should be required to record them on the time sheet or otherwise report them to payroll so that they can be counted as "hours worked." If your current practice is to pay "straight time" for missed breaks, note that you are still on the hook for the extra "half time" portion if the total hours worked by an employee exceeds 40 in a workweek (8/80 employers should pay daily overtime as well). If you provide your employees with breaks that are longer than 10 minutes, either voluntarily or pursuant to a CBA, be aware that, at least for now, the law only requires you to count the first 10 minutes of the missed rest breaks toward "hours worked." Expect labor unions, such as WSNA, to continue to push to have the entire break period counted, with the possibility of future grievances and litigation to try to expand the reach of 1-1/2 premium pay under CBAs even further. Finally, if in doubt, consult with legal counsel. Although the amount at stake for a single missed break may seem small, cumulative liability and class action lawsuits can multiply those sums into real money, not to mention exposure for attorney fees.

\*This Employment Law Note is written to inform our clients and friends of developments in labor and employment relations law. It is not intended nor should it be used as a substitute for specific legal advice or opinions since legal counsel may be given only in response to inquiries regarding particular factual situations. For more information on this subject, please call Sebris Busto James at (425) 454-4233.

© 2012 SEBRIS BUSTO JAMES