

Can we require employees to remain on our premises during rest breaks?

The answer to this question was much simpler before the California Supreme Court's December 22, 2016 decision in *Augustus v. ABM Security Systems, Inc.*, 2 Cal.5th 257 (2016).

Before the court's ruling in *Augustus*, it was not uncommon for employers to have policies that required employees to remain on-site during their paid rest breaks.

Under California law, employers must authorize and permit hourly, non-exempt employees to take a "net" 10-minute rest period for every 4 hours worked, or "major fraction thereof." Rest breaks are paid and as a result, some employers would require employees to stay at the worksite during rest breaks.

Rest Break Issues

In *Augustus*, the California Supreme Court addressed two issues related to rest breaks:

- Whether employers must permit employees to take off-duty rest breaks; and
- Whether employers could require employees to be on-call during rest breaks.

The case involved security guards who claimed they were not provided uninterrupted rest breaks because they had to carry pagers and remain on-call during their rest breaks.

Relinquishing Control

The court ruled that employers must relieve employees of all duty and relinquish control over how employees spend their time during rest breaks. The court explained that during rest breaks, "employees must not only be relieved of work duties, but also be freed from employer control over how they spend their time." The employee decides how he or she wants to spend the rest break.

The court didn't specifically say that employers couldn't require employees to remain on the employer's premises, but limiting where an employee can take a rest break is not consistent with relinquishing control over how the employee takes the rest break.

In addition, the court noted that an employee should be allowed to take a walk during a rest break, which suggests that it would not be permissible to restrict an employee from leaving the workplace during a rest break.

Even though you no longer should limit where an employee spends his or her rest break, you still can discipline employees who don't follow your rest break policy. If an employee chooses to leave the workplace to take a rest break and doesn't return in time, you can discipline the employee.

Review Policies

Employers should review their rest break policies for any provisions that may be seen as exercising control over employees during rest breaks. In addition, this case involved Wage Order 4, which applies to office workers and employees not covered under a specific industry order.

Although most of the other Wage Orders contain similar language about rest breaks, not all do. Employers should refer to the Wage Order that applies to their business, and consult legal counsel with questions about whether their rest break policies comply with California law.