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Calif. High Court Scrutinizes On-Call Rest Breaks

Barbara L. Harris Chiang, partner, and Elina Protich from the San Francisco office of Kaufman Dolowich & Voluck, LLP wrote an Analysis of oral argument in Augustus v ABM Security Services which was published in *Law360 on October 21, 2016.*

On Sept. 29, 2016, the California Supreme Court heard oral arguments in Augustus v. ABM Security Services Inc. to determine whether the security company's policy of requiring security guards to keep their radios and pagers on, remain vigilant, alert and wakeful, and respond when needs arise during their 10-minute rest breaks violates California Labor Code Section 226.7, which mandates that employees cannot be required to "work" during rest breaks, and the corresponding Wage Order 4. Underlying this case are two issues: (1) whether being on-call without actual interruption constitutes "work," and (2) whether the meaning of the term "work" differs if the employee is on a rest break as opposed to a meal break.

In 2012, the trial court ruled that "if you are on call, you are not on break" and that the possibility of being hailed by the employer nullifies the break. It awarded the class of 15,000 security guards about $90 million for rest period violations. The California Court of Appeal for the Second District reversed the trial court's ruling in 2015, holding that Labor Code Section 226.7 "prohibits only working during a rest break, not remaining available to work" and "remaining available to work is not the same as performing work."

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