



Law360 Posts Harris Chiang/Elina Protich Analysis of Rest Breaks Decision

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On Dec. 22, 2016, the California Supreme Court issued an opinion in *Augustus v. ABM Security Services Inc.* and finally put to rest two questions: (1) whether employees have to be relieved of all duties during rest periods pursuant to Labor Code Section 226.7 and Subdivision 12(A) of Wage Order 4; and (2) whether on-call rest periods are incompatible with state law. The court answered both questions affirmatively. A 5-2 majority found that the wage order and labor code require employers to “relinquish control over how employees spend their time” and “relieve employees of all duties” during employees’ 10-minute rest periods. On-call and on-duty rest periods are prohibited.

Background

The lawsuit began in 2005, when Jennifer Augustus, a security guard who worked for ABM, filed a putative class action on behalf of all ABM security guards. It was consolidated with similar actions filed by other ABM security guards. The plaintiffs alleged that ABM’s policy of requiring guards to remain on-call — “to keep their radios and pagers on, to remain vigilant and to respond when needs arose” — violated state wage and hour laws. In 2012, the trial court sided with the plaintiffs. It awarded the class of approximately 15,000 security guards roughly \$90 million for rest period violations on summary judgment.

The California Court of Appeal for the Second District reversed the trial court’s ruling in 2015 and determined that state law “prohibits only working during a rest break, not remaining available to work” and “remaining available to work is not the same as performing work.” In its December 2016 ruling, the California Supreme Court reversed the court of appeal, finding that employers are obligated to provide off-duty rest periods and that on-call rest periods are irreconcilable with this obligation. It upheld the \$90 million judgment for the plaintiffs.