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A new California Court of Appeal decision invalidates a wage order's collective bargaining exemption from meal period requirements, raising questions about the validity of other exceptions in California's wage orders.

## California Edition

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### Court Invalidates Collective Bargaining Exemption to California's Meal Period Rules

*By Paul R. Lynd*

In its recent decision in *Bearden v. U.S. Borax, Inc.*, No. B182625 (Apr. 7, 2006), the California Court of Appeal in Los Angeles invalidated a provision of an Industrial Welfare Commission (IWC) wage order that exempted certain employees covered by collective bargaining agreements from meal period requirements. The court held that the wage order's exemption exceeded the statutory exceptions to meal period requirements authorized by the California legislature. The decision adds to the uncertainty surrounding California's meal period requirements. Its holding calls into question other provisions of the wage orders that provide relief from meal period requirements beyond the terms in Labor Code section 512.

#### Waiver Provision in IWC Wage Order No. 16 at Issue

The IWC is a quasi-legislative body empowered to adopt wage orders governing the wages, hours, and working conditions of California employees. It has adopted 17 wage orders covering particular industries or occupations. IWC Wage Order No. 16-

2001 governs certain on-site occupations in the construction, drilling, logging, and mining industries. The IWC adopted Wage Order No. 16-2001 as a new wage order effective January 1, 2001. Previously, these occupations were not governed by any wage order.

Like the other wage orders, IWC Wage Order No. 16-2001's meal period provisions require meal periods in general accordance with Labor Code section 512. It requires a 30-minute duty-free meal period for a five-hour work period. It further requires that an employee cannot be employed for a work period of more than 10 hours without a second meal period, unless the employer and employee mutually consent to waive the second meal period, no more than 12 hours are worked, and the first meal period is taken.

In *Bearden v. U.S. Borax, Inc.*, the court considered section 10(E) of the wage order. That provision exempted employees covered by certain collective bargaining agreements from the wage order's meal period provisions. Section 10(E) provides that the meal period requirements "shall not apply to any employee covered by a valid collective

bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides for premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.”

None of the other wage orders contain a general collective bargaining exemption from meal period rules.<sup>1</sup>

## Exception Void Because Not Authorized By Statute

In *Bearden*, employees alleged that they worked 12.5-hour shifts at an open pit mine in Boron, California. With a shift of that length, California law requires two meal periods. The employees claimed that U.S. Borax only provided one meal period, and sued for penalties and other relief. The employees were covered by a collective bargaining agreement, but did not consent to waive their second meal period. U.S. Borax argued that it was exempted from providing a second meal period by section 10(E) of the wage order. The employees countered that the IWC exceeded its authority by adopting the collective bargaining exemption to meal period requirements.

The court held that the employees were correct, because the collective bargaining exemption adopted by the IWC was contrary to Labor Code section 512. That statute, enacted in 1999 and effective January 1, 2000, requires a 30-minute meal period for each five-hour work period, and it contains few exceptions. The law allows an employer and

employee to waive a meal period by mutual consent if the total work period for a day is no more six hours. It also permits an employer and employee to waive a second meal period by mutual consent if the first meal period is taken and the employee does not work more than 12 hours.

The legislature added three exemptions to Labor Code section 512. The first exemption authorized the IWC to permit a meal period to begin after six hours of work. In Wage Order No. 1-2001 (Manufacturing Industry), the IWC did so, allowing “the parties to a collective bargaining agreement” to agree to allow a meal period to commence after no more than six hours of work. Wage Order No. 12-2001 (Motion Picture Industry) thus also requires a meal period for each six-hour work period. The second and third exemptions remove certain employees entirely from the meal period requirements in the statute. They exempt employees in the wholesale baking and broadcasting and motion picture industries, as long as those employees are covered by a valid collective bargaining agreement that meets certain requirements.

There is no express statutory authorization for the general collective bargaining agreement exemption adopted by the IWC in Wage Order No. 16-2001. U.S. Borax argued that Labor Code section 516, which authorizes the IWC to adopt or amend working condition orders regarding meal periods, permitted the IWC to adopt the collective bargaining exemption in Wage Order No. 16-2001. However, as the court noted, the

legislature narrowed Labor Code section 516 effective in September 2000 so that the IWC can adopt orders regarding meal periods, “[e]xcept as provided in section 512.” Thus, based on the language in Labor Code section 516, the *Bearden* court held that the collective bargaining exemption in Wage Order No. 16-2001 was invalid.

The court concluded, “We conclude that section 516, as amended in 2000, does not authorize the IWC to enact wage orders inconsistent with the language of section 512.” In so holding, *Bearden* held that Labor Code section 512 essentially is a baseline for California’s meal period requirements, with Labor Code section 516 precluding the IWC from adopting exceptions to meal period requirements that are not authorized by statute.

## Questions About Other Wage Order Provisions

Although *Bearden* only concerned the collective bargaining exemption in Wage Order No. 16-2001, its holding that the IWC cannot enact orders inconsistent with Labor Code section 512 is significant. It raises potential questions about the validity of other meal period provisions in the wage orders that go beyond Labor Code section 512. For example, the wage orders allow employees to agree in writing to an on-duty meal period where the “nature of the work prevents an employee from being relieved of all duty” for a meal period. The statute, however, does not address on-duty meal periods. Also, while the statute allows for waiver of the second meal period on longer shifts, IWC Wage

<sup>1</sup> The language in section 10(E) borrows from the collective bargaining exemption from overtime and alternative workweek schedule election requirements found in most of the other wage orders and in Labor Code section 514.

Order Nos. 4-2001 and 5-2001 permit employees in the health care industry who work long shifts to “voluntarily waive their right to one of their two meal periods.” The validity of these and other provisions may be called into question under *Bearden*.

## Is More of Wage Order 16-2001 Invalid?

*Bearden* is not the first court to address the validity of Wage Order No. 16-2001. In an order issued on March 9, 2006 in *Small v. Brinderson*, the Orange County Superior Court held that at least the alternative workweek schedule election provisions of that wage order are invalid. The court ruled that the IWC did not issue an adequate “Statement as to the Basis” in support of the wage order, nor was the wage order properly published as required by the Labor Code.

Notwithstanding the adverse rulings of *Bearden* and *Small*, it is unlikely that any administrative action can be taken anytime soon to address the problems regarding Wage Order No. 16-2001. In July 2004, the IWC ceased operations after the legislature eliminated its funding. There are no pending proposals to reopen the IWC. Its wage orders otherwise remain in effect, however, at least to the extent their provisions have not been invalidated by the courts.

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