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The Oregon Supreme Court holds that employees may not sue their employers to recover unpaid wages for alleged failures to provide statutorily required rest breaks.

## Oregon Supreme Court Puts the 'Breaks' on Rest Period Claims

By Leigh Ann Tift, Amy R. Alpern and Jennifer L. Mora

In a decision that is sure to please Oregon employers, the Oregon Supreme Court, in *Gafur v. Legacy Good Samaritan Hospital and Medical Center*, held that Oregon employees do not have a private right of action to recover wages for rest period claims brought under Oregon wage and hour laws. (The Oregon Supreme Court did not review the trial court's and Oregon Court of Appeals' holding that employees also do not have a private right of action to recover wages for meal period claims brought against their employers.) The end result is that employees may not sue their employers for alleged failures to provide meal and rest periods in Oregon. Nonetheless, employers must continue to comply with the Oregon Bureau of Labor and Industries' (BOLI) regulations governing meal and rest periods in light of BOLI's continued authority to assess penalties for violating those regulations.

### Litigation Leading to the Oregon Supreme Court's Ruling

The plaintiffs, who were employees of hospitals owned by Legacy Health Systems, including Legacy Good Samaritan Hospital, brought a class action complaint against Good Samaritan seeking, among other things, compensation for required meal and rest periods that they alleged were not provided to them. At trial, Good Samaritan filed a motion to dismiss and claimed that although employees can generally bring suit against their employers for unpaid wages, they do not have a private right of action available to them for the meal and

rest period claims. The trial court agreed and dismissed the plaintiffs' meal and rest period claims.

The plaintiffs appealed to the Oregon Court of Appeals, which agreed with the trial court as to the plaintiffs' meal period allegations and affirmed dismissal of those claims against Good Samaritan. In sum, the court of appeals agreed that employees could not sue their employers for any alleged failure to provide a meal period because the law does not require that meal periods be paid. However, the court of appeals disagreed with the trial court to the extent that it dismissed the plaintiffs' rest period claims. Similar to the analysis in a Washington Supreme Court decision, *Wingert v. Yellow Freight Systems, Inc.*, 146 Wash. 2d 841 (2002), the Oregon Court of Appeals interpreted Oregon rest period regulations to require that employers provide their employees with a paid 10-minute rest period and to create a duty to pay employees "four hours of wages for three hours and 50 minutes of work." The court of appeals reasoned that employees who had not received their 10-minute rest period had "provided ten minutes of services for which they were entitled to be compensated but were not." The court of appeals' ruling meant that Oregon employers who failed to provide their employees with a paid 10-minute rest period were liable to employees for unpaid wages equal to ten minutes for every 4-hour work period. Understandably, this increased the exposure of Oregon employers to class action litigation based on missed rest periods to the extent that employees could show a pattern of missed periods.

The Oregon Supreme Court Holds that Employees Cannot Sue Their Employers to Recover Wages for Missed Rest Periods

Good Samaritan appealed the court of appeals' "missed rest periods" holding to the Oregon Supreme Court. The plaintiffs, however, did not appeal the court of appeals' decision to uphold the trial court's ruling that employees do not have a private right of action against Good Samaritan for alleged missed meal periods. As a result, the sole issue before the Oregon Supreme Court was whether Oregon employees have a private right of action against their employers when they allege that they were denied rest periods under Oregon law. A number of organizations weighed in on the issue by submitting amici briefs to the supreme court, including, among others, the Oregon Restaurant Association, the Oregon Association of Hospitals and Health Systems, the Portland Business Alliance, the Association of Oregon Counties, and the Oregon Trial Lawyers Association. BOLI filed an amicus brief in support of the plaintiffs' argument that such a cause of action is available to Oregon employees. Ultimately, the supreme court sided with employers on the issue.

As argued to the court of appeals, the plaintiffs maintained that the rest period regulation "entitled them to four hours pay for every three hours and 50 minutes worked" and that because Good Samaritan allegedly "failed to provide them the required 10-minute rest period, plaintiffs actually worked ten minutes in each four hour period for which they were not compensated." The Oregon Supreme Court disagreed.

In holding that Oregon employees may not sue their employers for alleged failures to provide rest periods, the court noted that the plaintiffs' position rests on the unspoken assumption that rest periods are not work, and then explained that "[w]hile that assumption might be valid in colloquial parlance, the text of the rule, its context, and related statutes demonstrate that 'work' is a term of art for purposes of wage and hour laws, and it includes rest breaks." The court then concluded

that "an employee who takes a rest break does not stop working for wage and hour purposes." In fact, the court reasoned that "an employee who works four hours and takes a 10 minute rest break within that four-hour period 'works' the same amount of time (for wage and hour purposes) as an employee who works four hours and does not take a rest break." Given this, "employees who were not provided rest breaks during a four-hour shift but were paid for four hours of work for that shift have not been paid 'less than the wages to which the employee is entitled'" under Oregon wage and hour law and, therefore, may not pursue a wage claim against their employer.

The court also noted that the statute granted BOLI the authority to prescribe "minimum conditions of employment . . . as may be necessary for the preservation of the health of employees" and that the aspect of the regulation pertaining to rest periods "is such a rule." The court compared the rest period regulation with other rules that were promulgated for the "health of employees," such as rules regarding lifting excessive weights or providing a sanitary and safe work environment. According to the court, "[n]othing in any of those 'condition of employment' rules suggests any intention on BOLI's part to require employers to pay additional wages in the event of their violation."

### What this Decision Means for Employers

Employers with business operations and employees in Oregon are likely to see a decrease in the volume of class action litigation based on this ruling. That being said, Oregon employers must continue to comply with BOLI's regulations governing meal and rest periods for their employees, especially in light of BOLI's authority to assess civil penalties of up to \$1,000 for each violation of the rules. In this regard, nonexempt employees must be provided with a 30-minute unpaid meal period when the employee works six hours or more, as well as paid 10-minute rest periods for every four hours worked or major portion thereof. Employees cannot waive their right to take a meal or rest period,

and the burden is on Oregon employers to ensure that their employees are, in fact, taking lunch and rest breaks.

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