

On Break, But Still On Call: “On Call” Rest Breaks Are Permissible Under California Law

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On Dec. 31, 2014, the California Court of Appeal, Second District reversed a \$94 million judgment in a wage-and-hour class action against ABM Industries Incorporated (ABM) in *Augustus et al. v. ABM Security Services Inc.* The judgment was initially granted by a California trial court in 2012. ABM appealed the damages award, which was granted on summary judgment in a set of consolidated class actions alleging ABM’s policy of requiring security guards to carry a radio during their breaks effectively put them “on call” during said breaks, and therefore violated California labor law. In an unpublished opinion, a three-judge panel unanimously reversed the summary judgment ruling and vacated the award. The Court of Appeal rejected the plaintiffs’ theory that the company violated wage and hour laws by requiring some employees to remain “on call” and carry radios during rest breaks. In reversing the trial court’s grant of summary judgment for the plaintiffs, the Court of Appeal agreed with ABM that “on-call” rest breaks are permissible under California law. The consolidated class actions date back to 2005, when Plaintiff Jennifer Augustus first filed her complaint on behalf of herself and other security guards at ABM alleging the ABM policy that required the guards to carry radios during breaks violated the Labor Code because an employee that is “on call” is not on a break. The class action was seeking compensation in wages, interest and penalties to a class of around 15,000 former and present security guards. The plaintiffs claimed that ABM violated wage and hour laws by asking some employees to carry radios and remain “on call” during rest breaks. Consequently, the trial court ruled that “California law requires employers to relieve their workers of all duty during rest breaks.” However, the Court of Appeal agreed with ABM that “remaining on call does not itself constitute *performing work*.” Because California law requires “only that an employee not be required to work on a rest break,” the Court held that rest breaks are valid even where workers on breaks are not “relieved of all duties, such as the duty to remain on call.” The Court of Appeal stated that “although ABM’s security guards were required to remain on call during their rest breaks, they were otherwise permitted to engage and did engage in various nonwork activities.” The Court of Appeal also noted that “ABM’s security guards . . . engaged in various non-work activities,” while on their rest breaks, “including smoking, reading, making personal telephone calls, attending to personal business and surfing the Internet.”

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