

Court Affirms That Healthcare Employees Working 12+ Hour Shifts Can Waive One of Their Two Meal Periods

Upon reconsideration in *Gerard v. Orange Coast Memorial Medical Center*, Case No. G048039 (March 21, 2017) (*Gerard II*), the Fourth Appellate District decided that IWC Wage Order 5 is valid and that healthcare employees may waive one of their two required meal periods on shifts longer than 8 hours.

The court's first opinion concluded that IWC Wage Order 5 was partially invalid to the extent that it authorized healthcare employees to waive their second meal periods on shifts over 12 hours. (*Gerard v. Orange Coast Memorial Medical Center*, 234 Cal.App.4th 285 (2015), *review granted* May 20, 2015, S225205 (*Gerard I*))

The California Supreme Court transferred the case back to the court of appeal with directions to vacate its decision and to reconsider the cause in light of the enactment of SB 327. [As we reported previously](#), SB 327 declared that non-exempt employees who work in the healthcare industry may waive one of their two meal periods, even when they work shifts that exceed twelve hours.

In *Gerard II*, the court acknowledged that it "erred" in *Gerard I*, citing SB 327 as reinforcement of this decision. According to the court, "the Legislature's unmistakable focus in SB 327 was the disruptive effect of our opinion in *Gerard I* on the longstanding and widespread use of second meal period waivers by employees and employers in the health care industry." Consequently, the court accepted SB 327 as the "legislative declaration" of the meaning and gave the Legislature's action "its intended effect."

Therefore, the court held that the second meal period waivers signed by plaintiff healthcare employees were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable.

Employer Takeaway

Gerard II is a good reminder that employers in the health care industry do have some limited leeway that other employers do not have in the providing of rest and meal breaks.

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The Wage Order defines “healthcare Industry” as “hospitals, skilled nursing facilities, intermediate care and residential care facilities, convalescent care institutions, home health agencies, clinics operating twenty-four (24) hours per day, and clinics performing surgery, urgent care, radiology, anesthesiology, pathology, neurology or dialysis.”

The Wage Order further defines “Employees in the Healthcare Industry” as any of the following:

- (1) Employees in the healthcare industry providing patient care; or
- (2) Employees in the healthcare industry working in a clinical or medical department, including pharmacists dispensing prescriptions in any practice setting; or
- (3) Employees in the healthcare industry working primarily or regularly as a member of a patient care delivery team
- (4) Licensed veterinarians, registered veterinary technicians and unregistered animal health technicians providing patient care.

Health care employers should review any 12 hours shifts worked by their eligible “employees in the health care industry” to consider the use of Wage Order 5's second meal period waiver. In order to be valid, any such waiver must be documented in a written agreement signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice.

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