

## California High Court Shuts Down Meal Period Rounding

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In an opinion issued Thursday, the California Supreme Court ruled that employers cannot use timekeeping practices that round meal period punch times.

The decision is a big blow for employers—especially those with large numbers of hourly workers—who have looked to implement rounded timekeeping practices as a way to ease the administrative burdens that come along with tracking and calculating hours worked.

The class action lawsuit—*Donohue v. AMN Services, LLC*—was originally brought more than five years ago by a nurse recruiter who alleged that her employer’s policy of rounding meal period punch times to the nearest ten-minute increment caused pay shortages. She argued that the rounding policy produced time records that did not reflect short and delayed meal periods, and thus, employees were not paid for meal period violations that were owed based on the precise punch times.

AMN countered that the rounding policy was fair and evenhanded. According to AMN, the rounding policy actually resulted in a net gain for employees. That is, the time employees were paid for that they did not actually work outweighed the pay shortages over time.

Both parties moved for summary adjudication, and AMN prevailed . . . *at first*. In affirming the trial court’s decision granting AMN’s motion, the Court of Appeal held in 2018 that fair and neutral rounding policies—policies that are commonly used to record hours worked for the purposes of overtime compensation—may be applied to the timekeeping of meal periods as well.

This was a big win for employers. For a moment, it looked like they had the stamp of approval they needed to implement efficient rounding practices in the Golden State.

But a few months later, the California Supreme Court granted a petition for review on the issue. And late last week, the Court finally handed down the long-awaited decision. In reversing the Court of Appeal, the opinion unambiguously held that employers cannot round punch times in the meal period context.

**Why?** Because precision is key when it comes to employee meal periods in California, the Court reasoned. The majority decision pointed out the precise timing requirements in the provisions regulating meal periods. For

example, meal periods must be at least 30-minutes long, and they must be provided at very specific intervals (e.g., in a normal 8-hour workday, the meal period must begin before the end of the fifth hour of work). The meal period provisions, the Court concluded, “are designed to prevent even minor infringements on meal period requirements, and rounding is incompatible with that objective.”

The Court also emphasized the meal period premium wage—an additional hour of pay that employers owe when they fail to comply with these precise timing requirements. Because of the meal period premium, the Court found that facially neutral rounding policies are not actually neutral in the meal period context. The Court explained that AMN’s rounding policy would never trigger a meal period premium when the premium is not actually owed, but it would serve to deny premium pay when the premium would have been triggered absent rounding (e.g., when a delayed meal period is rounded down so that it appears to be timely).

Separately, the Court held that time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations.

The *Donohue* decision serves as a warning for California employers using rounding methods for timekeeping purposes. Employers who apply time-rounding policies in the meal period context should suspend these practices and consult counsel. Moreover, based on the Court’s guidance in this decision, employers that utilize general rounding practices should be wary of the potential problems that rounding policies may cause.

For further information, please reach out to any of the attorneys listed below, or your Winston relationship attorney.

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