

## HUMAN RESOURCES &amp; LABOR LAW



## Employment Law: Meal Period Perils

Compliance with California's meal period requirements is extremely challenging for every business, but it is especially difficult for smaller companies that do not maintain robust time keeping systems or do not have the resources to make sure policies are being followed. Meal period claims are often the heart of wage and hour class actions and PAGA lawsuits, where exposure can run into the millions even for smaller companies. They are also commonly brought in tandem with individual discrimination and wrongful termination claims.

Three California Supreme Court decisions handed down in the last year have heightened the danger of liability for meal period claims. In the Ferra case, the court ruled that the meal period penalty (one hour of pay per day) must be calculated by taking into account commissions, non-discretionary bonuses, or other pay given to employees, in addition to the straight time hourly wage. The Donahue decision enacted a presumption that the employer is liable for any missed, late or short meal periods recorded in the timekeeping system. The employer then bears the burden of proving that the employee voluntarily chose to skip the meal period, take it later than the 5th hour of work, or take less than 30 minutes. Most recently, the court in Naranjo held that meal period penalties are equivalent to wages, creating additional liability for waiting time penalties if they are not paid at termination, and penalties for inaccurate wage statements if the meal period penalties are missing.

What can your business do to lessen the risk of liability from the onslaught of

meal period lawsuits and these recent decisions? In addition to having a complete compliant meal period policy in your employee handbook and making sure each employee has signed an acknowledgement of the policy, you should also train all managers and supervisors so they understand their crucial role in insuring the policy is followed. Someone in the organization should be tasked with regularly auditing your timekeeping and payroll records to make sure meal periods are being taken in accordance with the law, and that any incidents of non-compliance result in payment of the meal period penalty and documentation on the wage statement. Payroll providers now offer automatic tracking of missed, late or short meal periods and automatic payment of meal period penalties, which lessens the burden of auditing and tracking, but increases the temptation for employees to purposely miss meal periods or take them late so they get one more hour of pay.

Lastly, you should implement some mechanism for documenting when employees voluntarily miss their meal period or take it late. This can be a written acknowledgment or electronic in the timekeeping system.

We invite you to contact our office today to schedule a consultation with Erick Becker to learn more about employment law options.

For more information: visit [www.CumminsandWhite.com](http://www.CumminsandWhite.com), call (949) 852-1800 or email [ebecker@cwlawyers.com](mailto:ebecker@cwlawyers.com)



### Erick Becker

Erick Becker is a Senior Partner with Cummins & White specializing in helping employers stay compliant with the myriad laws and regulations governing employment. He represents employers in all facets of employment litigation, and has extensive experience handling matters before administrative agencies, including the NLRB, EEOC/DFEH, and California Labor Commissioner. He also advises employers on union issues, including maintaining union free status and contract negotiations.



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### Practice Areas

Mr. Becker works with clients in a wide variety of industries, including construction, manufacturing, transportation, not-for-profit, and health care.

Mr. Becker has been a course instructor on "Human Resources and the Law" for the Human Resources Management program at the University of California, Irvine, and regularly speaks at conferences on human resources.

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HUMAN RESOURCES & LABOR LAW



## Yes, COVID-19 is Still a “Thing” in the Workplace

By Lindley Fraley, Esq.

It may seem like COVID-19 is a distant memory – we have at-home COVID tests, mask mandates are long gone, and summer get-togethers are in full swing. However, California employers still have a host of regulations with which to comply. How can an employer run an effective and profitable business, and still comply with these requirements?



Cal-OSHA’s Emergency Temporary Standards issued on 4-21-22 remain in place. These standards loosened previous requirements, but a few notable points remain:

1. COVID-19 is still considered a hazardous disease that employers have a duty to protect their employees from;
2. COVID-19 tests must remain available, free of cost, and “paid work time” for employees who have been a close contact to someone with COVID-19, whether that contact is at work or not;
3. COVID-19 workplace plans are still required by Cal-OSHA;
4. Supplemental Paid COVID-19 Sick Leave is still in effect.

The key to compliance is to have a COVID-19 workplace policy that can be adjusted as necessary. An effective policy will contain COVID-19 information regarding self-monitoring for symptoms, workplace hygiene recommendations, and extensive information regarding leave policies. California employees have access to Supplemental Paid Sick Leave, as well as workers’ compensation if COVID-19 is contacted in the workplace.

Employers should purchase home tests that can easily be administered at work during paid work hours or sent home with employees to test prior to work. Testing must be paid for by the employer and be done “on the clock.” Moving tests to “on the clock” will cut down on actual work time.

Finally, employers should still have disposable N-95 or higher grade masks available for employees, which is direct evidence of an employer’s attempt to protect employees from COVID in the workplace.

COVID-19 regulations have loosened significantly, but employers must take well planned steps to comply with the law and protect their business interests.



## Work Visa Solutions for Orange County’s Tech Industry

From local startups to established corporations, Orange County’s diverse tech community has some of the most innovative companies in the country. As competition for talent remains fierce, companies might find a need to hire citizens or nationals of other countries. When a top candidate is a foreign national, companies might consider sponsoring the employee’s visa. Below are several visa categories tech companies should consider when looking to employ a foreign national.



Recent graduates who attended university in the U.S. on a student visa might be eligible for Optional Practical Training (OPT). OPT typically allows up to 12 months of employment authorization, but individuals with STEM degrees may extend their OPT for an additional 24 months.

An H-1B visa might be available when the position requires the application of highly specialized knowledge, such as engineering or mathematics. The prospective employee must hold at least a bachelor’s degree in a related field.

Candidates who have at least one year of experience with a foreign subsidiary or affiliate might be eligible for an L visa. L-1A visas are available for individuals in managerial or executive positions, and L-1B visas are for individuals with “specialized knowledge” of the company’s products or processes.

Individuals with “extraordinary ability” might be eligible for an O-1 visa. The O-1A visa category can apply to professionals such as software engineers and computer scientists whose achievements and contributions to their industry demonstrate that they possess “extraordinary ability” within their field. Individuals with extraordinary achievements in the arts, television, or motion picture industry may be eligible for O-1B classification.

A well-run immigration program can be powerful competitive advantage in terms of recruiting and retention. To compete with increasing demand for the top talent in tech, companies should keep the above visa categories in mind.

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