

## **Court of Appeal Confirms Validity of Meal Period Waivers for Health Care Industry**

On March 21, 2017, a California Court of Appeal published its decision in *Gerard v. Orange Coast Memorial Medical Center II*, which resolved confusion and controversy that arose out of the court's earlier decision in *Gerard v. Orange Coast Memorial Medical Center I* regarding the law governing meal period waivers in the health care industry

Labor Code §512 provides that employees who work more than five (5) hours in a workday must receive a meal period of at least 30 minutes, except that when employees work more than five (5) hours, but no more than six (6) hours, the meal period may be waived. It also provides that employees who work more than ten (10) hours in a workday must receive a second meal period of at least 30 minutes, except that when employees work more than ten (10) hours, but no more than twelve (12) hours, the second meal period may be waived, but only if the first meal period was not waived.

The California IWC Wage Orders govern wages, hours, and working conditions of California employees. Wage Order 5 governs employees in the health care industry. Since 2000, that Wage Order has stated a meal period waiver rule unique to the health care industry. Section 11(D) of the Wage Order provides that health care employees who work more than eight (8) hours in a work day may waive their right to one of their two meal periods.

In *Gerard I*, it was undisputed that employees of Orange Coast sometimes worked more than twelve (12) hours in workday, and sometimes waived their second meal periods. Employees claimed that section 11(D) of Wage Order 5 was invalid because it allowed a meal period waiver for any shift of over eight (8) hours, which conflicts with Labor Code §512's provision that meal periods cannot be waived for shifts over 12 hours.

The *Gerard I* court agreed with the employees, and found that any meal period waivers to which the employees agreed for shifts over twelve (12) hours were invalid. This caused confusion and controversy in the health care industry regarding the meal period waivers previously obtained pursuant to explicit authorization in the Wage Order, and the effect on the health care industry going forward.

Orange Coast sought and obtained Supreme Court review. While review was pending, statutory provisions were enacted to specifically address *Gerard I*, and they explicitly declared that Wage

Order section 11(D) was valid notwithstanding anything stated in Labor Code §512. The case was remanded to the Court of Appeal for reconsideration in light of the new statutory provisions. In *Gerard II*, the Court of Appeal clarified that its decision in *Gerard I* was in error, and therefore, meal period waivers pursuant to Wage Order section 11(D) are, and have always been, legal.

### **TAKEAWAY**

Second meal period waivers by health care industry employees during shifts more than 12 hours from the time Wage Order 5 was enacted in 2000, and going forward, are valid.