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You've gotta fight for your right to nap

Toni Jaramilla is an employment lawyer in Los Angeles, representing workers.



In a 9-4 vote, the Los Angeles City Council recently approved a \$26 million settlement paying more than 1,000 trash truck drivers for nine years of unpaid meal breaks. The settlement would give approximately \$15,000 to each sanitation truck driver in the class action for alleged meal break violations by

the city of Los Angeles.

The \$26 million figure is more than justified - and perhaps even more money should have been paid.

Imagine the work day of one of the sanitation workers who was part of the class-action that was filed in 2006 against the city: The employee's day starts in the early morning hours, before many of us wake up. He drives a heavy garbage truck on a busy route through our city, making sure that our commercial and residential neighborhoods are free of the accumulating trash from the week. He must stay alert and vigilant for traffic and pedestrians, ensuring the safety of people and property while timely completing his route. Any accident, mishap or failure to adhere to a strict time schedule could cost him his job. His livelihood, his health benefits, his ability to care for himself and his family would be over. After hours of exhausting work, he is entitled to a break. However, like most other employees, he has no break room to eat or rest. The city streets are his "break room."

As his employer, the city of Los Angeles imposed work rules in which this driver cannot take a nap in his truck, nor can he congregate with other co-workers at restaurants in large groups. During his break - which, under the California Labor Code, should be completely free from work responsibilities - he is restricted from leaving his route to find a meal or to rest. By imposing these restrictions, the city violated the Labor Code provision which requires all California employers, whether a public or private entity, to provide meal breaks of at least 30 minutes after five hours of work for its non-exempt hourly employees. The employer does not have to pay for this off-duty meal break so long as (1) the employee is relieved of all duties; (2) the employer relinquishes control over the employee's activities; (3) the employer permits the employee a reasonable opportunity to take an uninterrupted 30-minute break; and (4) the employer does not discourage the employee from taking his/her break. The city's ban on napping and congregating in large groups clearly violate the Labor Code, justifying the large payout to each employee affected, and to the attorneys who rightfully fought for these employees' rights.

The city and the two council members who voted against the settlement claimed that the restrictions imposed during off-duty breaks were justified. City officials claimed that the work rules were supposed to protect the public image of the Bureau of Sanitation by keeping the public from seeing a worker appear to be sleeping on the job or not tending to their duties. However, the city certainly had other options to address this issue, without putting the burden on its employees through a complete ban on napping during off-duty time. For example, the city could have provided a sign that the employee could place on the truck window that says "ON BREAK." The signs could shade the occupant resting inside from public view, while notifying a passerby that the city truck is not abandoned and that the employee is on a break, rather than simply sleeping on the job. This solution is similar to when an employee, alone in a store, needs to take a break and can place a sign on the door that says "Back in 30 minutes."

Regarding the ban on congregating in large groups at restaurants or leaving designated pick-up routes, the city claims it was concerned that restaurateurs would be inconvenienced. It is doubtful that restaurant owners would want to turn away large groups who are willing to pay money to dine at their establishments. To the contrary, they would likely welcome the increased business. Nonetheless, if the concern was for

Questions and Comments

NEWS RULINGS VERDICTS

SPECIAL REPORT

Thursday, August 28, 2014

Immigration

Immigration ruling grants domestic violence victims stronger asylum claims

While the immigrant surge on the border jams courtrooms, asylum barriers fell for many this week with a landmark ruling in favor of domestic violence victims.

Judges and Judiciary

Get me rewrite! State appellate justices' amended opinions can be revealing

Justices sometimes falter when drafting opinions, penning ill-conceived footnotes, hyperbolic diatribes and incorrect facts. Sometimes, though, they take another shot, editing blunders out of the permanent record.

Immigration

Ordered 'recusal' shows lack of autonomy

Respected immigration court judge and former federal prosecutor Afsaneh Ashley Tabaddor, recently challenged a Department of Justice order that she not hear cases involving Iranian nationals. By **Kevin R. Johnson**

Litigation

Squire Patton Boggs accused of conflict in corn syrup litigation

Recently formed Squire Patton Boggs LLP is facing accusations it breached ethical obligations to clear certain conflicts of interest and therefore must be disqualified as counsel.

Judge upholds state prevailing wage law

San Diego County Superior Court Judge Joel R. Wohlfeil upheld a state law Wednesday that requires municipalities to follow prevailing wage law when using state funds on development projects.

U.S. Court of Appeals for the 9th Circuit FedEx drivers are employees, 9th Circuit rules

In a reversal, the 9th U.S. Circuit Court of Appeals on Wednesday ruled against FedEx Ground Package System Inc., which sought to classify a group of truck drivers as independent contractors instead of employees.

Corporate

Reed Smith, Cooley work on Jaguar Animal IPO

San Francisco-based veterinary biopharmaceutical developer Jaguar Animal Health Inc. tapped Reed Smith LLP to help guide the company's planned \$70 million initial public offering.

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safety and not having multiple large garbage trucks blocking the streets in one area, again the city had other options. It could have explored and found a convenient area for the sanitation workers to park their trucks while they took their breaks. The city could give the workers extra time to park their trucks in designated areas or other large open areas and walk to their rest and meal destination. We see these kinds of waiting stations afforded to our metro buses. Perhaps there are open parking structures that the city could secure for certain times of the day that coincide with break schedules. In addition, breaks could have been scheduled to stagger so that only a limited amount of sanitation workers would need to take a break at the same time. The point is that reasonable and alternate solutions could have been explored and found. The solutions should not have been, and should never be, at the expense and burden of employees.

California is fortunate to have a strong and protective Labor Code in place. The laws on rest and meal breaks are important for ensuring safety and productivity. Both employees and employers benefit from these laws. A high functioning and safe workforce is achieved by giving employees proper rest and meal time. Employees will not be exhausted. Their work environment will be more enjoyable. They will be more efficient, accurate, and safe, thereby benefitting employers and increasing business profits and services. Huge, multi-million dollar settlements, such as the one achieved by the sanitation truck drivers, are a much needed reminder of our labor laws and the importance of complying with them.

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WELCOME TO Fabulous LAS VEGAS NEVADA

A roundup of recent real estate deals and the lawyers involved.

Government

Tort lawyers notch mixed victories in legislation

With the legislative session days away from closing, plaintiff's lawyers have had some mixed victories. But tort lawyers' big disappointment involves amendments to a bill to require rideshare companies to carry substantial insurance.

Immigration

Undocumented immigrants must be told of rights, settlement states

U.S. border officials must make immediate changes to the way undocumented immigrants are informed of their right to a hearing before an immigration judge, according to a class action settlement announced Wednesday.

Intellectual Property

In legal battle against Samsung, Apple loses again in injunction bid

Apple has lost its latest legal bid to prevent rival Samsung Electronics Co. Ltd. from selling smartphones that were found to infringe Apple patents.

Law Practice

Technology, Proposition 46 among issues at CAALA convention

CAALA president-elect Joseph M. Barrett says the nation's largest local trial lawyers association will focus on Proposition 46, supporting younger attorneys and sharing professional wisdom at this year's annual convention in Las Vegas.

Intellectual Property

Damages expert can testify in Adobe Systems patent trial, judge rules

In a patent infringement trial against Adobe Systems Inc., patent holder Digital Reg of Texas LLC will have its damages expert available to testify after his revised report was accepted by a federal judge on Wednesday.

Corporate

LendingClub taps Fenwick & West LLP to help guide IPO

O'Melveny & Myers LLP is advising the underwriting syndicate in connection with the offering.

Perspective

Online privacy concerns only increasing

As the use of the Internet has expanded to permeate every aspect of our lives, so have myriad legal issues, challenging the law in catching up in areas like online privacy. By **Kimberly Buffington and Caroline Toto**

Labor/Employment

Paid sick leave bill would hamstring California employers

A bill pending before the state Legislature would impose significant costs on California businesses by requiring both small and large employers to provide mandatory, protected, paid sick leave to their employees. By **Chris Micheli**

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The Los Angeles City Council recently approved a \$26 million settlement paying more than 1,000 trash truck drivers for nine years of unpaid meal breaks. By **Toni Jaramilla**

Judicial Profile

Arthur A. Garcia

Superior Court Judge Santa Barbara County (Santa Maria)

Corporate Counsel

Chad Freed

General Counsel and Senior Vice President of Business Development of Universal Technical Institute Phoenix, Ariz.

Criminal

San Diego prosecutors target elder abuse crimes in long-term care facilities

A pilot project launched in June by the San Diego County district attorney's office is the first of its kind in the state to create a specialty unit for these cases, legal observers said.

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