

Ninth Circuit Gives California Employers a Break in Defending Rest Period Claims

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In *Davidson v. O'Reilly Auto Enterprises, LLC*, No. 18-56188 (August 3, 2020), the Ninth Circuit Court of Appeals addressed whether a district court abused its discretion in denying class certification for an employee's claim for improper rest breaks under California law where the employer allegedly had a facially defective written rest break policy.



In *Davidson v. O'Reilly Auto Enterprises, LLC*, No. 18-56188 (August 3, 2020), the Ninth Circuit Court of Appeals addressed whether a district court abused its discretion in denying class certification for an employee's claim for improper rest breaks under California law where the employer allegedly had a facially defective written rest break policy. In affirming the decision of the district court, the Ninth Circuit concluded that the mere existence of a facially defective policy did not constitute "significant proof" that the policy had been actually applied to employees.

The District Court's Decision

O'Reilly Auto Enterprises, LLC, employed Kia Davidson as a delivery specialist in one of its retail locations in San Bernardino, California. Near the end of her employment with O'Reilly, Davidson sued the company alleging that it had violated California's rest break requirements. Davidson alleged that O'Reilly had failed to provide her and other O'Reilly employees with compliant rest breaks and had failed to pay rest break premiums.

Davidson claimed that O'Reilly had violated California's rest break law, which requires employers to authorize and permit a paid 10-minute rest break "for every four hours of work or major fraction thereof." She brought a motion to certify a class of nonexempt, hourly paid O'Reilly employees on the issue. In the motion, Davidson argued that O'Reilly's written rest-break policy was facially defective because it omitted any language regarding breaks during the "major fraction thereof" of a four-hour

work period. In denying class certification on the issue, the district court found that Davidson had failed to show that the defective policy was consistently applied to O'Reilly employees. The district court also observed problems with Davidson's own declaration, such as its failure to state affirmatively that she had been denied proper rest breaks.

The Ninth Circuit's Decision

A divided Ninth Circuit panel affirmed the district court's denial of class certification. It found that the district court had not abused its discretion in denying class certification because Davidson "failed to show that employees suffered the common injury of being deprived of rest-period premiums to which they were legally entitled."

Focusing on Davidson's reliance on O'Reilly's allegedly defective rest break policy, the Ninth Circuit determined that "the mere existence of a facially defective written policy—without any evidence that it was implemented in an unlawful manner—does not constitute '[s]ignificant proof' ... that a class of employees were subject to an unlawful practice." The Ninth Circuit agreed with the district court's findings that Davidson's evidence had failed to show actual violations of California's rest break laws or that the policy had been applied to employees.

Key Takeaways

The Ninth Circuit's decision offers helpful authority for employers facing wage and hour class actions based on alleged violations of California's rest break laws. It suggests that the mere existence of a facially defective written policy alone is insufficient grounds to support class certification, since a plaintiff must prove that an alleged policy was implemented and actually applied to the putative members of a proposed class. The decision also clarifies the evidentiary burden at class certification, since a plaintiff cannot prevail by relying exclusively on a written policy, even one that is facially defective.

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