



# Meal Time May Prove Stomach-Churning For Hospitals

Insights

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For many of us, the perils of a lunch break include braving the weekend's leftovers, testing the over-used and under-cleaned breakroom microwave, or searching the community refrigerator for your poorly-labeled brown-bag lunch. But as recent lawsuits filed against several Pennsylvania hospitals demonstrate, meal breaks can prove far more stomach-churning than three-day old leftovers.

These lawsuits included allegations that the hospitals violated federal wage-and-hour laws by failing to pay employees for all the time worked. The lawsuit included a potential plaintiff class of over 50,000 current and former employees.

## Lunch-Time Litigation

Like many hospitals, the defendants' policies provided for meal periods when employees were to be completely relieved of duties. According to policy, if an employee did not receive at least twenty uninterrupted minutes of a meal period, the time would be paid.

The problem arose because the hospitals' computerized time-keeping system *automatically* deducted thirty minutes of time from employees' time after five consecutive hours of work. Policies stated that the employees were responsible for seeking adjustment of the automatic deduction if and when they were unable to take a corresponding meal break.

The plaintiffs alleged that employees routinely worked during meal periods, with their supervisors' knowledge, but were not paid. Employees asserted that they had to eat without relief and, therefore, frequently worked during their designated meal period. They also alleged that regardless of whether they were taking a meal break, they were expected to respond to pages, but were not paid for doing so.

In May, a federal judge found sufficient evidence of potential violations of wage-and-hour laws to allow the lawsuits to proceed as class actions. The court also found that the hospitals' written policies may have improperly shifted the burden to employees to ensure their pay was not improperly reduced.

## Scrutinizing Snack Time

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These lawsuits are not isolated. Employers across the nation are facing increased scrutiny of meal and break periods. Last year, clinic nurses in California filed a lawsuit alleging violations of meal and rest-period requirements. At the time, the employer had already reportedly paid \$3.8 million to employees for missed meal periods between 2005 and 2007.

While some states, such as California, impose requirements on employers to provide employees with breaks or meal periods, the FLSA *does not* mandate breaks of any kind. Rather, for most employees, these are benefits voluntarily provided by the employer to improve productivity and employee morale. But if not properly administered, such benefits can lead to costly, complicated litigation.

### **Break and Meal-Period Requirements**

The rules concerning meal and break periods are deceptively simple. Generally, if an employer offers a short break (typically five to twenty minutes), the time is considered "hours worked" and must be paid.

By contrast, bona fide meal periods (typically thirty minutes or longer) are not considered work time and are not compensable. For a meal period to be "bona fide," employees must be completely relieved of their duties and free to leave the work area. If an employee is interrupted or required to perform any work during the period, the employee may be entitled to pay for the whole period. Accordingly, a unit secretary who stays at her work station and answers phones or a nurse who responds to pages during a meal period must be paid.

It's normally not enough just to tell employees not to work during meal periods, or that they must obtain approval to do work during their lunch break. You must pay employees for all hours worked – even for work done without advance permission. So systems that take automatic deductions are inherently risky.

### **Conclusion: Monitor Policies and Practices**

These examples demonstrate why employers must accurately record all hours worked, regardless of scheduled breaks. You cannot simply shift this responsibility to employees. Noncompliance may result not only in costly litigation, but can hurt employee morale and even provide an issue for would-be union organizers. It's critical not only to implement compliant policies, but to regularly audit time recording practices.

### ***Related People***

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