

Automatic Time Deductions for Meal Breaks Can Be Very Costly

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Automatic deductions, where the employer's time-keeping system assumes and deducts for a 30-minute meal break, have proved to be a fruitful target for plaintiffs.

During the past 10 years, over 40,000 lawsuits have been filed under the federal Fair Labor Standards Act (FLSA), and the trend shows no signs of easing. Filings increased by 10 percent in 2010. There has been a similar flood of lawsuits under state and local laws. This wage and hour litigation has become almost a "cottage industry" for plaintiffs' lawyers seeking high dollar, high-profile cases. These cases are becoming increasingly common not only because they usually involve numerous employees, but because the law allows prevailing plaintiffs to recover liquidated (or double) damages, plus attorney's fees.

These cases are also unique and troublesome because unlike most employment litigation, the hospital's intentions are irrelevant. In other words, even a logical, well-intentioned policy does not prevent liability when a technical violation occurs.

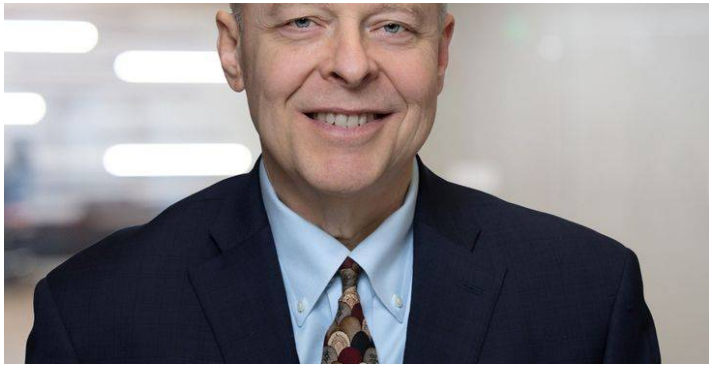
Within the broad classification of so-called "off the clock" FLSA cases, missed meal and break periods allegations are increasingly common. These allegations can be even more costly because the allegedly unpaid work time often pushes the employee's compensable time to more than 40 hours in a week, thus into a higher overtime pay rate. Fortunately, it is also relatively easy for employers to reduce or even eliminate exposure in these cases.

To safeguard against this trend, many hospitals have returned to the nearly abandoned practice of having workers literally clock out for meal periods and clock back in when they return to their workstations. By itself, this change considerably reduces the risk of lawsuits seeking unpaid wages for missed (but deducted) meal periods.

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