



Overstaying Rest Breaks: Paid Time, Or Not?

Insights

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Acme Corporation's longstanding policy is to give non-exempt employees two 10-minute rest breaks each workday. It treats these breaks as paid worktime. Management recently realized that, over the years, most of the employees have gradually come to be spending 15 to 20 minutes or even a little longer on each break. Acme sent out a memo reminding everyone that the breaks are limited to 10 minutes, but it had no effect. Could Acme start considering the over-10-minute extensions to be unpaid time?

The U.S. Labor Department has said that this *is* permitted under the federal Fair Labor Standards Act, if an employer makes its intentions clear in advance.

The FLSA does not require employers to give rest breaks (which should be distinguished from lactation breaks, which *are* required). Many employers do give rest breaks, of course, and the Labor Department's position is that short periods like this (typically running from five to about 20 minutes) count as worktime for employees who are subject to the FLSA's minimum-wage and/or overtime requirements. In the Labor Department's view, such breaks mainly have the effect of promoting employee efficiency, so they cannot be deducted from or offset against other compensable time.

Consequently, many employers assume that, when an employee stretches a ten-minute break to 20 minutes, the FLSA does not allow the additional ten minutes to be treated as non-compensable time. On the contrary, the Labor Department's internal enforcement manual takes the position that unauthorized break extensions need not be considered worktime, so long as the employer has expressly and unambiguously told employees that:

- ◇ Authorized breaks may last only for a specific length of time;
- ◇ Any extension of those breaks is against the rules; and
- ◇ Any extension of those breaks will be punished.

Section 31a01(c), *Field Operations Handbook* (U.S. Labor Department, December 15, 2000)([link to reproduction below](#)).

Any employer looking to rely upon this position in the future would be well-advised to adopt a written break policy that includes these points and makes clear that unauthorized extensions will

not be counted as worktime. It should also be able to show that employees are aware of the policy.

Remember that many states impose rest-break rules of their own. Employers must also be aware of and comply with whatever the applicable obligations are. A state need not follow FLSA interpretations with respect to breaks, including as to whether unauthorized extensions of breaks are or are not to be counted as worktime under the state's own break requirements or under its other laws relating to hours worked.

[FOH 31a01 12 15 00.pdf \(27.36 kb\)](#)