



## Beware the Meal Period Time-Bomb (Updated 08/10/10)

Insights

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An increasing number of federal Fair Labor Standards Act lawsuits and U.S. Labor Department investigations include claims based upon the employer's automatically deducting meal periods from non-exempt employees' recorded worktimes. Typically, the employees did not clock out-and-in to reflect the mealtime they took.

Instead, the employers systematically subtracted the full, scheduled meal period from each employee's total daily hours on the assumption that the person took an entire, uninterrupted meal break each workday. An employee who worked during a meal period could avoid the deduction by using an exception feature of the timekeeping system, but the usual allegation is that employees did so inconsistently or infrequently, if ever.

### What Could Go Wrong?

Generally speaking, the FLSA does not require that employees be compensated for duty-free meal periods. However, to the extent that automatic time deductions deprive an employee of FLSA-required wages for work during a meal period, a violation often occurs. For instance, this frequently happens when the "standard" deduction is made for a day when the employee takes no meal break or takes only a shortened one, or where the meal period is shot-through with work-related interruptions.

A timekeeping-by-exception approach to meal periods is not unlawful under the FLSA ***if it results in an accurate record of non-exempt employees' hours worked***. See, e.g., *Opinion Letter of Office of Enforcement Policy FLSA2007-1NA* (May 14, 2007). However, experience suggests that this is *not* what occurs in the real world. An unusual set of circumstances might permit such a claim to be defended successfully, but even then the "win" is likely to be so expensive and disruptive that it will not feel much like a victory.

A safer approach is to instruct employees clearly that:

- ◇ They are to clock out-and-in accurately for the time taken for a meal period;
- ◇ They are not to work during mealtime unless it is unavoidable; but
- ◇ They will be compensated for and must therefore accurately record any time so worked.

## **The Bottom Line**

Of course, even if employees are told these things, in the end what matters is what *actually happens*. For example, there might be situations in which work-related interruptions of a meal period should lead to considering the entire period to be compensable worktime.

Meal periods might also be regulated by the laws of other jurisdictions. In addition to considering FLSA issues, it is also important to know whether and how those laws might affect timekeeping and pay where meals are concerned.

**UPDATE 08/10/10:** As recent news reports demonstrate, this is an increasingly frequent subject of claims made in disputes with health-care institutions.