



## Should You Still Be Worried About Meal and Rest Breaks?

Insights

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The answer is an unqualified yes.

Meal and rest breaks are important because missed breaks create significant liability. An employee who misses a meal period or takes a late meal period or a short meal period is owed a penalty. The penalty is equal to one hour of pay. One penalty is owed for each day in which a break is missed. Five missed, late or short meal periods in one week can mean that employee is owed an additional 5 hours of pay. The same is true for missed, short or late 10 minute rest breaks. As a result, one employee who works 5 days a week and fails to take proper breaks could cost the business 10 hours of pay in penalties (5 hours for meal breaks and 5 hours for rest breaks). However, these penalties are just the beginning. Additional penalties can be assessed if the employee leaves the company (voluntarily or otherwise) and he or she was not paid for missed breaks. These penalties are known “waiting time” penalties and they generally equal 30 full days of that employee’s wages. Also, if the employee worked off the clock during his or her meal break, the missed or interrupted meal break could create a claim for underpayment of minimum wage or overtime. Other penalties can also be assessed for inaccurate wage statements. This happens when the employee claims that the pay stub did not accurately reflect hours worked because it did not account for missed breaks. All of these penalties will add up to thousands of dollars of liability for just a few missed breaks on the part of one minimum wage employee.

However, those who have been watching the headlines know that the real threat is not the solitary employee who alleges that he missed his breaks. The true threat is class and representative actions in which one former employee alleges that every co-worker also missed their breaks. This employee then uses the class or representative action to ask for penalties on behalf of himself and all of his or her co-workers for a number of years. This is the form in which most meal break claims will arrive at your door - as a class or representative action. The class and representative actions multiply the exposure many times over and convert a claim worth several thousand dollars to a claim worth several hundred thousand dollars.

Do not despair. While the potential exposure is significant, there are a number of steps you can take to safeguard your business.

First, ask your current and former employees to sign an arbitration agreement. This agreement, if properly drafted, should prevent your employees from bringing a class action. This step alone could

cut any potential liability by close to 75%.

Second, have your attorneys prepare a written meal and rest break policy and have all employees review and acknowledge receipt of this policy in writing. Do not just pull a policy from the internet, as there are a number of key components which need to be included. A policy which is mostly right but not 100% correct could be just as bad as not having a policy at all.

Third, implement training for your managers and supervisors on the meal and rest break policy and make sure that they fully understand and comply with the policy.

Fourth, schedule regular training sessions with the employees at which you review the policy and have them acknowledge in writing that they attended each session.

There are a number of other measures which can be taken and should be discussed with your counsel. However, following the four steps outlined above should prevent future lawsuits and help you prove your defenses if any lawsuits are filed.

### ***Related People***

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