

## **BAD BREAK: OREGON EMPLOYER PAYS QUARTER-MILLION DOLLAR WAGE & HOUR FINE**

Insights  
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The Oregon state agency charged with enforcing the state's wage and hour laws has announced the largest civil penalty against an employer in its long history – nearly \$277,000. According to the Oregon Bureau of Labor and Industries (BOLI), Portland's Legacy Emanuel Medical Center will be forced to pay over a quarter-million dollars to resolve allegations that many of the organization's workers were not receiving mandatory meal periods and paid breaks in accordance with state law. What can other Oregon employers learn from this situation to avoid a similar fate?

### **BACKGROUND: GIVE ME A BREAK!**

Starting in 2015, the state agency received a series of complaints from Legacy employees alleging that they did not get their mandated meals and breaks. Over a two-year span, workers lodged about a dozen complaints alleging violations of state wage and hour laws. In one complaint filed in September 2016, an employee asserted they had only been granted two or three 10-minute breaks in 18 years of work for the organization. In an April 2016 complaint, a nurse alleged she was forced to eat during her active shifts because she was not getting time off. And in November 2015, an operating room employee wrote to the agency saying, "Not receiving breaks. Can be stuck without breaks for 8 hours. Please help."

BOLI launched an investigation in 2016 and determined that there were over 4,400 meal and rest period violations in the two-year period in question. The problems spanned several

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departments; for example, the agency found over 1,300 violations in the surgery department, over 2,600 in the housekeeping department, and about 450 in the family birthing center.

The state concluded that the alleged violations caused problems for the employees and could have also impacted the services provided by the employer. For example, several surgical technicians claimed they couldn't even use the bathroom to relieve themselves for four hours or more. According to a statement by the agency commissioner, the breaks were also important for wellbeing of the patients served by the workers in question.

The hospital originally announced its intent to fight the charges, but reversed course in an announced November 2 settlement. While Legacy Health disagreed with the state's conclusions, it no longer wanted to dispute the fines and incur further attorneys' fees. Legacy Health also announced that it has been "truly focused on making sure our employees get their breaks, which is better for our employees and results in better patient care."

## **WHAT DOES THE LAW REQUIRE?**

Oregon meal and rest break law is deceptively simple, but violations can lead to drastic consequences. Let's start with paid rest periods, or breaks. The law requires employers to provide a 10-minute rest break for every segment of four hours, or major part thereof, worked. Thus, the number of breaks an employee should receive will differ depending on how long the employee's shift is. For example, once an employee works more than two hours, they are entitled to one paid break. If they work more than six hours, they need to receive two such breaks. These breaks should be provided as close as possible to the middle of the work segment at issue, and can't be tacked on to the end of the work day ("You can just leave ten minutes early and consider that your break").

During this break time, employees should be relieved of all work. It is up to the employer to ensure that they are giving the breaks and to show that employees are actually taking the breaks.

There is a similar system in place for meal periods. Anyone who works a shift of more than six hours is entitled to an

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uninterrupted 30-minute unpaid meal period. If the employee is interrupted during that time, the entire meal period becomes a paid period of work. But that doesn't mean employers should feel comfortable interrupting their workers during lunches and feeling like you can throw money at the problem to make it go away. There are only certain situations that would allow you to interrupt a meal period, such as exceptional and unanticipated circumstances, industry custom or practice establishing a different meal period, or undue hardship based on a significant difficulty or expense when considered against the nature of the employee's business. Again, you as the employer have an obligation to ensure your workers are taking their full lunch breaks and will be expected to monitor and enforce the situation.

## WHAT CAN YOU DO?

As you can probably figure out from the large fine levied against Legacy, violations can be costly. The problems can quickly accumulate and lead to significant liability. So how you can avoid a similar fate?

You should start with a clear written policy requiring meal and rest breaks to be taken, specifically spelling out for all workers the amount of break time to which they are all entitled. You should next supervise workers closely to ensure the breaks and meals are being taken, training managers to stay vigilant in the enforcement of your policy. Consistent enforcement of your policy is crucial. For example, if you know an employee isn't taking their breaks, you should talk to them, document the conversation, and pay them for the time. If the problem persists, you should issue them discipline such as a written warning for failing to abide by the policy.

If you have questions about how these changes will affect your workplace, contact any attorney in our [Portland office](#) at 503.242.4262 or your regular Fisher Phillips attorney.

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*This Legal Alert provides information about a specific wage and hour civil settlement. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

