

OREGON COURT OF APPEALS DECIDES THERE'S NO SUCH THING AS A FREE LUNCH

Insights
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The Oregon Court of Appeals just held that employers may be held liable not only for failing to *allow* employees to take meal breaks, but also for failing to *ensure* that employees take meal breaks to which they are entitled. This significant decision handed down on November 14 clarifies that Oregon employers have a legal duty to police their employees to ensure that they take their full meal breaks – merely providing employees with the opportunity to take such breaks is insufficient. Pursuant to the [*Maza v. Waterford Operations, LLC*](#) decision, if you fail to force an employee who works six or more hours to take a duty-free meal period for a continuous, uninterrupted 30 minutes, you might be responsible for paying the employee for the full 30 minutes.

BACKGROUND: WHAT DOES THE LAW SAY?

By regulation, the Oregon Bureau of Labor and Industries (BOLI) has long required that Oregon employers provide employees who work a shift of more than six hours with a 30-minute, unpaid meal period (and, if the employee works 14 or more hours, the employer must provide a second such unpaid meal period) ([OAR 839-020-0050](#)). Prior to amendments to that regulation in 2010, [the Oregon Supreme Court held](#) that employees did not have a private right of action against employers who failed to provide such a meal period. The court said that employees could sue employers who required work during an unpaid meal period (*i.e.*, did not pay employees for work performed), but did not have a right of action against employers who paid employees for all

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time spent working but failed to provide a full 30-minute, continuous meal period.

In 2010, BOLI amended OAR 839-020-0050 to expressly provide that “if an employee is not relieved of all duties for 30 continuous minutes during the meal period, the employer must pay the employee for the entire 30-minute meal period.” Most employers, including Waterford Operations, reasonably read this regulation to require that they give employees the *opportunity* to take a meal break, but most employers did not read this regulation to *require* that they monitor employees to ensure they took such meal breaks. Indeed, this argument had prevailed in some federal district court cases, including the 2011 *Weir v. Joly* case (holding that to “require an employer to police when an employee clocks in and out [for meal breaks] would be an unreasonable burden”).

OREGON COURT OF APPEALS ADDS TO EMPLOYER’S BURDENS

In *Maza*, the defendant relied on this same argument. In fact, Waterford Operations not only permitted its employees with the opportunity to take meal breaks, its employee handbook expressly informed employees that taking their meal breaks was mandatory and could not be waived. It further provided that employees were required to notify human resources if an employee was ever required to forego a meal period or work off the clock. Based on these facts, the employer posited that it “provided” meal breaks under the plain language of the regulation. The Oregon Court of Appeals, however, rejected this argument.

Instead, it held that employers are *strictly* liable to pay for the full 30 minutes if the employee fails to receive an uninterrupted, 30-minute meal period, regardless of the reason the employee did not receive his or her full meal break. Therefore, even if an employee voluntarily returns to work one minute shy of 30 minutes, and even if the employer is unaware that the employee has returned to work before the full 30-minute period has expired and did nothing to require or encourage the employee to return early, the employee may sue the employer to recover a full 30 minutes of pay.

If there is a silver lining to this decision, it does not appear to provide employees who receive *paid* meal periods with a cause of action for failure to provide a continuous, 30-

minute meal period. It appears that [the 2010 Oregon Supreme Court case](#) remains good law on that point.

WHAT SHOULD OREGON EMPLOYERS DO?

In light of this decision, it is imperative that you take steps to ensure that non-exempt employees take uninterrupted, 30-minute meal periods if they work six or more hours, and that you can prove that the employees took said breaks. You should consider requiring that employees clock out for meal periods if such meal periods will be unpaid.

If possible, you should implement systems that prohibit employees from clocking back in from a meal period before the full 30-minute time has passed. You should also seek to remove employees from work areas and otherwise preclude them from doing any work during unpaid meal periods. Such breaks should be taken in break rooms.

Further, if you have remote employees or employees who commonly use devices like cell phones to perform work, you should take steps to ensure that such employees are not performing work during their meal periods. This may require periodic audits of employees' emails to ensure they are not working during meal periods.

As U.S. District Court Judge Hernandez noted in the 2011 *Weir* case, policing employees in this manner is a significant burden. However, this most recent case requires you to undertake this burden or face potential exposure to crippling class action litigation.

If you have questions about complying with Oregon's wage and hour laws, contact your Fisher Phillips attorney or any attorney in [our Portland office](#).

This Legal Alert provides an overview of a specific new state court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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