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December 06, 2019

### Oregon Court Imposes Strict Liability for Missed Meal Breaks

A decision by the Oregon Court of Appeals in *Maza v. Waterford Operations LLC*, 300 Or. App. 471 (2019), raises the bar for Oregon employers on meal breaks, making employers liable for missed meal breaks even if they make every effort to provide them.

#### **Court of Appeals Decision**

The Oregon Court of Appeals was asked to review a decision by a trial court refusing to allow a wage-and-hour class action for unpaid meal breaks. Oregon requires a 30-minute uninterrupted meal break for work over six hours. The employer in *Maza* argued that it provided for meal breaks in its policies and required that they be taken. It also provided a process for employees to report any meal break issues and required that employees speak up if they missed a meal period or performed unpaid work. The trial court reasoned that, because a class action requires the individual claims be factually similar, the action could not be tried as a class action because each meal break had to be individually examined to see why it was missed.

The employees appealed to the Oregon Court of Appeals. After reviewing Oregon law and the interpretation of that law by the Oregon Bureau of Labor and Industries, the court of appeals reversed the trial court. The court of appeals held that Oregon regulations required employers to provide employees with a 30-minute, duty-free, meal period. The court rejected the employer's position that an employer need only make the meal period available and has no duty to ensure the meal period was taken. Noting that the law stated that the meal period is intended for the health of employees, the court of appeals found that it would be inconsistent with that intent to allow employers to avoid liability for missed meal periods. It concluded that "a 30-minute meal period is mandatory and, if not taken, the employer must pay the employee's wages for the full 30 minutes."

Under this standard the reasons why an employee missed a full 30-minute break would no longer be relevant and therefore the action could be brought as a class action. The court of appeals sent the case back to the trial court to redetermine class action status based upon its decision.

It is highly likely that this case will be appealed. However, for now, it presents a heightened standard for liability or, as the court of appeals noted, "strict liability." No matter what efforts an employer makes to ensure that employees take a full 30-minute break, if a break is interrupted or if an employee fails to take a break, the employer will be liable.

A significant and potentially unavoidable result of this decision is that it will make it easier for employees to join together in a class action for missed breaks. Regardless of the merits, a class action is often time consuming and expensive for employers to defend. A wage-and-hour class action in Oregon can be particularly expensive if the employer loses. Claims for meal breaks will likely fall under Oregon's wage payment statute which provides for up to 30 days of penalty wages for a failure to pay wages due.

#### **What To Do Now**

Employers should reevaluate, and potentially revise, their break policies. Some of the things to consider include:

Managers should be trained to enforce meal breaks and be held accountable for missed breaks

- Employer policies should make it clear that employees must take breaks, and if they fail to take a break without permission, they may be subject to discipline
- Employers that use time clock systems should require employees to clock in and out for meal breaks
- If practicable, employees should be geographically separated from their work area while on meal breaks to prevent interruptions
- For offsite employees, employers may need to conduct periodic audits of email traffic, computer usage or other available data to determine if an employee is working during a required meal break
- Employers should provide mechanisms for employees to report missed or interrupted breaks and require that employees report missed or interrupted breaks
- Employees should be required to review and approve their weekly timecards, including meal breaks

The above actions won't avoid a strict liability analysis. However, they may allow employers to better monitor, control and prevent missed and interrupted breaks. In addition, taking these actions will strengthen an argument that a break was not, in fact, missed or interrupted. These actions may also enhance an argument in a purported class action lawsuit that treatment as a class action is not appropriate because the determination of missed meal breaks is too fact-specific given the employer's policies and practices in place to prevent them.

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