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The Dangers Of Employees Taking A "Working Lunch"

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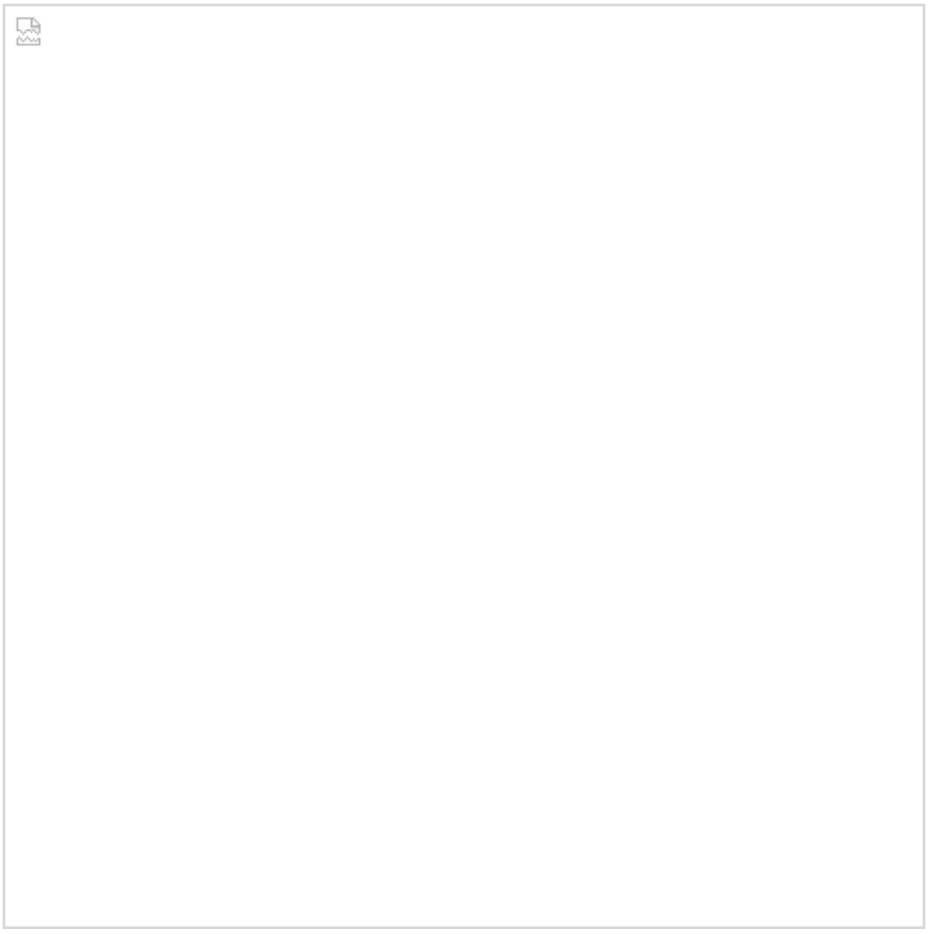

An Employer's liability may turn out to be more than anticipated when employees work through their meal breaks. The Department of Labor's FLSA regulations say that "meal breaks" of 30 minutes or longer ordinarily *may be* unpaid. By contrast, "rest periods" of 20 minutes or less *must be* paid.

"What happens," a wary human resources manager might ask, "if my company allows its employees to take breaks that are longer than 20 minutes and less than 30 minutes?" And, if the company's timekeeping system automatically deducts 30 minutes per day from employees' paychecks for meal breaks, the same human resources manager might also wonder, "What happens when my company's employees cut their meal breaks short to get back to work or – worse yet – work entirely through their meal breaks?" The short answer is "trouble." You may find that you have an Fair Labor Standards Act collective action lawsuit on your hands.

A recent Pennsylvania case illustrates the high stakes of FLSA litigation. *Potoski v. Wyoming Valley Heath Care System*, No. 3:11-cv-582, 2013 WL 6731035 (M.D. Penn. Dec. 19, 2013) involves two hospital workers who claim their meal breaks (and that of similarly situated co-workers) are regularly cut short by the hospital, making them compensable "breaks," not unpaid lunch hours. The end result is that the employees claim they are not paid for all of

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the time that they “work,” and they sought to have their case certified as a collective action.

In response, the hospital pointed to language in its employee handbook explaining it is an *employee’s* responsibility to notify the supervisor of timekeeping inaccuracies. But, the plaintiffs said the notification process was so complicated that many employees chose not to use it (and they suggested that the hospital knew this was the case). The court ultimately determined that hospital workers had presented sufficient evidence to warrant conditional certification – the burden is low – and now the hospital faces the possibility of an entire class of employees who have worked for a portion of their meal periods within the last three years.

Cases like *Potoski* demonstrate how easy it is to fall on the wrong side of the FLSA and the dire consequences for such missteps. Work time must be compensated. We all know that. But an employee who returns to work from her 30-minute unpaid meal break 10 minutes early might not be entitled to just those extra 10 minutes. A “meal break” (which, again, may be unpaid) could easily be perceived as a “rest period” (which must be paid) by the Department of Labor in such a situation.

In short, when you allow an employee to return to work early, you open yourself up to much more in terms of FLSA liability than you might think at first.