

## An Employer's Liability Under The FLSA Can Be High

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Timekeeping software that automatically deducts meal break time from employee paychecks can be problematic for employers. This is because employees sometimes work through their meal breaks, and that exposes employers to liability under the Fair Labor Standards Act (the FLSA). The FLSA requires employers to pay employees for all of the time that they spend working – including the time that they spend working through their meal breaks. We've mentioned all of this before. What we haven't mentioned previously is how quickly the numbers in FLSA cases can add up. An employer's liability under the FLSA can be high even in the most average of cases. There are a number of reasons why. First, FLSA cases – almost invariably – involve multiple employees and/or plaintiffs. If one employee says that she has had to work through meal breaks, then you can bet that several more probably have too. Second, FLSA cases often cover extended periods of time. Typically, employees don't complain that they have worked through lunch once; they complain that they have worked through lunch on a weekly basis for a number of years. Third, unpaid meal break time will be paid at the employees' overtime rate if it came during a week in which the employees had already worked 40 hours or more. Fourth, employees are typically awarded "liquidated damages" in FLSA cases equal to the amount of unpaid wages. In other words, employees receive twice what they say they were owed. Fifth, punitive damages can be awarded at the discretion of the court. And, sixth, employers are commonly required to reimburse employees for the legal fees and costs that they incur in bringing FLSA suits. A case that is presently in federal court in California, *Martinez v. Air Express International USA, Inc.*, Case No. 2:12-cv-02994, is a good example of how the FLSA numbers can add up. In that case, the employees of an air freight cargo company sued their employer for violating the FLSA in a number of ways – including by automatically deducting time for meal breaks that the employees did not actually take. The court recently granted preliminary approval of a proposed \$1.75 million settlement. \$1,098,667 of the settlement is to be distributed to the 304 employees. The employees will receive an average of \$3,615.84 which is intended to compensate them for 248 weeks' worth of unpaid wages – or \$14.58 per week. Legal fees of \$583,333 and various costs eat up the remainder. These numbers are fairly tame as far as FLSA cases are concerned. They are high enough to raise an eyebrow perhaps, but they are not so high as to be shocking in the context of FLSA litigation. Keep that in mind the next time an FLSA issue – be it employees working through meal breaks or something else – surfaces in your workplace. Quickly nipping such issues in the bud will often be your best defense. Think of it this way: Which would you rather do – pay \$14.58 to an employee who has worked through her lunch break now or pay \$1.75 million to the employee, her co-workers, and her team of lawyer three years down the road?

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