

Working Through Lunch: An Update On The Legal Risks

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Regular readers of this blog know that we've previously alerted you to the risks of using timekeeping software that automatically deducts the lunch hour from employees' paychecks. As we've explained before, such software can expose employers to liability under the Fair Labor Standards Act because, for one reason or another, employees sometimes work through lunch. And, even if an employer has a system in place for employees to request pay for lunchtime work, that is no "get out of jail free card," because employees who bring FLSA lawsuits commonly argue that they did not use – or were discouraged from using – the system. A lawsuit that was filed earlier this month in Texas federal court gives us another reason to sound the alert. In *Corcione v. Houston Methodist*, the plaintiff alleges that she – and a class of some 5,000 nurses, nurses assistants, patient care assistants and other employees at seven different medical facilities – were required to keep their cellphones on hand during their meal breaks in case they were needed to respond to emergencies. And, even though the employers had systems in place for requesting pay for lunchtime work, the plaintiff claims that managers discouraged employees from making such requests. The plaintiff seeks to recover the unpaid wages (for the time claimed to have been worked, including overtime pay), liquidated damages, and legal fees. In other words, the plaintiff wants tens of millions of dollars. A policy requiring nurses (and similar employees) to be available so that they can respond to emergencies probably seems reasonable to you, and we feel the same way. Work "emergencies" aren't limited to the medical field, of course, and many other types of employers have similar policies – written or unwritten. If you're one of them, just remember that the ramifications of such policies can land you on the wrong side of the FLSA if you're not careful. We've said it before, and we'll say it again: Work time must be compensated. Even if that "work time" comes during what – on a normal day – would have been "lunch time."

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