LEGAL MINUTE

Employers Have Control Over Unpaid Meal Breaks

Hopefully all HR professionals in Wisconsin are aware that state law requires employers to pay non-exempt employees for all breaks unless both of the following are true: 1. The break is at least 30 minutes; and 2. The employee is completely relieved of all job duties, including interruptions by the employer.

Employers can find themselves on the receiving end of a wage claim if they do not strictly safeguard these requirements. That is why we advise, for example, that employers ensure that they do not interrupt their employees with questions during an unpaid meal break; Doing so would transform the break into paid time. Employers must also ensure that employees take their full 30 minutes; Allowing employees to punch back in after a 28-minute lunch would also transform the break into paid time.

However, recent federal court guidance has confirmed that employers are not required to pay employees for breaks that are supposed to be 30 minutes and during which the employees are completely relieved from their job duties if the employees choose to shorten their break without the knowledge or interference from the employer.

Wirth v. RLJ Dental, S.C. involved a dental clinic that had a clear policy that employees were to clock out for an unpaid, hourlong lunch period each day and were not to clock back in until the start of their next shift. The clinic was totally closed down over the lunch hour and employees were not to perform any work during this time. One of the clinic's employees, Wirth, repeatedly shortened her breaks to less than 30 minutes. Wirth's supervisor repeatedly instructed her that she needed to take full lunch breaks, but Wirth ignored these instructions. The 7th Circuit Court of Appeals agreed that the dental clinic did not have to pay Wirth for her meal breaks that were less than 30 minutes because the clinic provided Wirth with at least 30 minutes of break time during which she was completely relieved of her job duties, and it was Wirth's decision not to take the breaks. The Court said:

> Wirth attempted to transform her non-compensable meal period into a compensable rest period by clocking back in after less than 30 minutes, despite what her employer provided and her employer's repeated instruction to take her full break. Wirth wants us to focus on her conduct—the fact that she elected to take a lunch break of less than 30 minutes. But this focus is misplaced. The Wisconsin regulatory scheme focuses on what the employer provided, not what the employee elected. Because RLJ provided 30 minutes or more during which Wirth was completely relieved from duty for the purposes of eating lunch, RLJ was not obligated under the law to pay her for the time she was off the clock.

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