



Unpaid Breaks Can Be Expensive

Hotels.com, the Internet-based discount accommodation reservations call center headquartered in Texas, will pay \$126,133 in back wages to 898 current and former telephone operators following a Department of Labor (DOL) investigation. DOL Wage and Hour Division investigators found that from May 15, 2001, to May 15, 2003, Hotels.com unlawfully deducted 30 minutes a day for two 15-minute rest breaks from the workers' pay, depriving the employees of overtime pay each week.

The Regulations to the Fair Labor Standards Act state that "rest periods of short duration, running from 5 minutes to about 20 minutes, are common in the industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked." Therefore, employers who offer 15-minute morning or afternoon coffee or rest breaks are required to pay employees for that time.

However, "bona fide meal periods" are not compensable under the FLSA. To qualify as a bona fide meal period, the employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily, 30 minutes or more is long enough for a bona fide meal period. The employee is not considered "relieved" if he is required to perform any duties, whether active or inactive, while eating. Consequently, an office employee who is required to eat at her desk or a factory worker who is required to be at her machine is working while eating and must be compensated. The employer does not have to require the employee to leave the premises, but the employee should be completely freed from her respective job duties during the 30-minute break.

Employers are urged to check their policy with respect to rest and meal periods to ensure compliance with the FLSA. Bear in mind that it is difficult to defend collective actions under the FLSA because the time records alone are enough to prove a violation and a mistaken interpretation of the regulations is not a defense. A company-wide deficiency could lead to large money damages under the Act, depending on the number of employees affected. Damages under the FLSA include two to three years back pay, an equal amount as liquidated damages, and attorneys' fees.

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