

## Publications

### **Labor and Employment Alert: Meal Period Interruptions Do Not Always Render Time Compensable**

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The Sixth Circuit Court of Appeals recently issued a decision regarding whether interruptions of an employee's meal period automatically render that time compensable under the Fair Labor Standards Act (FLSA). On January 7, 2015, in *Ruffin v. Motor City Casino*, the court ruled that the meal breaks of casino security guards, during which the guards were not permitted to leave the casino property and were required to monitor their radios and respond to emergencies, were not compensable under the FLSA.

The security guards were regularly scheduled to work 37.5 hours per week, with a 30-minute unpaid meal period each day. They alleged that they were entitled to overtime pay because: (1) they were required to attend a 15-minute roll call meeting prior to each shift (1.25 hours per week); and (2) their 30-minute meal periods each day were actually compensable work time because the guards had to monitor their radios and respond to any emergencies that arose (2.5 hours per week). As a result, the guards claimed they actually worked 41.25 hours each week and were entitled to overtime pay.

The Sixth Circuit affirmed the decision of the district court granting summary judgment in favor of Motor City Casino. In making its decision, the appellate court applied a long-standing principle for determining compensability of time under the FLSA: time is compensable if it is spent "predominantly for the employer's benefit." The court reviewed three factors in its compensability analysis: (1) whether the guards were engaged in the performance of any substantial duties during their meal periods; (2) whether the employer's business regularly interrupted their meal periods; and (3) the guards' inability to leave the premises during their meal periods.

Regarding the first factor, the court found that "monitoring a radio, and being available to respond if called, is a *de minimis* activity, not a substantial job duty." The court noted that the guards were free to eat, read, socialize, watch television and talk on their cell phones, and that they had failed to show that monitoring their radios interfered with those activities. As for the second factor, the court found that the

guards had consistently testified that their meal periods were rarely interrupted. For example, one of the guards could recall only one interrupted meal period in 10 years of employment. With respect to the final factor, the court noted that the FLSA regulations provide that “it is not necessary that an employee be permitted to leave the premises if he is otherwise completely free from duties during the meal period.” The court observed that the relevant inquiry was whether the employer requires an employee to eat on the premises as a “round-about way of extracting unpaid work from the employee.” Here, the casino’s requirement that the guards take their meal periods on the premises did not convert their meal time into work time because they spent their meal periods “doing exactly what one might expect an off-duty employee to be doing on a meal break: eating, socializing, reading, surfing the Internet, and conducting personal business on their smartphones.”

In the end, the Sixth Circuit agreed with the guards that their required attendance at pre-shift roll call meetings each day was compensable, but since those extra 1.25 hours per week only raised their weekly hours to 38.75, they were not entitled to overtime pay.

While the Sixth Circuit’s decision is welcome news for employers, it should not be interpreted as bestowing an unfettered right on employers to keep employees on their premises during meal breaks, or to require employees to monitor events happening during their meal breaks. For example, if the meal periods of the Motor City Casino security guards had been interrupted more frequently, the court would have likely found their meal periods compensable.

This case serves as a reminder to employers to review their FLSA compliance regarding meal periods. Among the issues employers should consider are:

- How frequently are your employees’ unpaid meal periods interrupted by work?
- Do you pay employees for unpaid meal periods that are interrupted by work? Even if you are not requiring employees to perform work during their unpaid meal periods, are you aware of employees who, on their own, perform work during their meal periods (e.g., an office employee who answers phones or responds to business email during his/her meal period)? Under the FLSA, if an employer “suffers or permits” an employee to perform work during a meal period, that meal period is compensable.

If you need any assistance in determining whether your employees’ meal periods comply with current FLSA requirements, please contact your Vorys lawyer.