OREGON EMPLOYERS MUST ENSURE FULL 30-MINUTE MEAL BREAKS ARE TAKEN

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Labor, Employment and Workplace Safety Alert

INTRODUCTION

On November 14, 2019, the Oregon Court of Appeals in *Maza v. Waterford Operations, LLC*, 300 Ore. App. 471 (Or. Ct. App. 2019), held that employers must not only make meal breaks available to hourly employees, they must also monitor and ensure employees take meal breaks. An employer cannot simply rely on a handbook provision that hourly employees are authorized to take an unpaid 30-minute meal period. This appellate decision could have important consequences for Oregon employers who employ individuals that work between six and eight hours per day. These employers should review their policies and procedures to avoid potentially substantial liability.

BACKGROUND

Oregon Revised Statute 653.261(1)(a) authorizes the Commissioner of the Bureau of Labor and Industries ("BOLI") to prescribe minimum conditions of employment, including meal breaks, as "may be necessary for the preservation of the health of employees." Acting on that authority, BOLI proclaimed Oregon Administrative Rule 839-020-0050(2), which obligates employers to provide employees a continuous 30-minute meal break for a work period of six hours or more. The rule further provides that an employer must compensate the employee for the full 30-minute meal break if the employee is not relieved of all duties during that break.

In *Maza*, a putative class of 54 hourly employees claimed they did not receive the full continuous 30-minute meal break and sought wages for the alleged violation. It was undisputed that defendant employers "*authorized*" hourly employees to take a continuous 30-minute meal break. Defendants argued this authorization (or offer to take a meal period) was sufficient under OAR 839-020-0050(2), and they could not be penalized if an employee voluntarily took a shortened meal break. Plaintiffs, on the other hand, argued that if, "for whatever reason," an employee does not receive a full 30-minute meal break, employers must pay for the entire meal period.

Ultimately, the Oregon Court of Appeals agreed with Plaintiffs and concluded that employers are strictly liable for ensuring employees actually take their full 30-minute meal breaks, no matter the circumstances, resulting in a shortened break. The Court also concluded that if a full 30 minutes was not taken, the employer must pay for the entire 30 minutes. In other words, these 30-minute meal periods are mandatory (absent applicable waiver)[1] and employers have a duty to monitor employees' work and meal periods to ensure the latter breaks are taken.

First, in interpreting the rule's text and context, the Court found that the plain text of the rule, which "prescribes" minimum meal periods, demonstrates BOLI's intention that employers make the meal period mandatory. Second, by reviewing other sub-divisions of the rule, including 839-020-0050(8), which describes the process by which a food or beverage service employee can voluntarily "waive" a meal period, the Court determined that the waiver

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provision would be unnecessary if subsection (2) was not mandatory. Third, the Court reasoned that permitting employees to take shortened meal breaks would defeat the objective of the rules, which is to preserve the health of employees. Finally, because employers have "authority over the workplace," the Court concluded they are "in a unique position to enforce mandatory meal periods necessary for the preservation of the health of employees."

Accordingly, the Court held that employers have a responsibility to monitor meal breaks and ensure that employees take continuous 30-minute meal breaks, or if the full 30 minutes are not taken, pay employees for the time. Otherwise, employers could face costly penalty wage claims.

WHAT SHOULD OREGON EMPLOYERS DO?

Maza sends a clear message: Oregon employers should revisit their meal period policies and procedures to ensure they are complying with this rule's requirements as well as their duty to monitor and ensure that employees are actually taking full meal periods.

Notes:

[1] Pursuant to OAR 839-020-0050(8), tipped food and beverage service workers may elect to waive meal periods under certain conditions, if such requests are made in writing using forms provided by BOLI.

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