



Employers Beware of Missed Meal Periods

By Tina M. Aiken

Washington law is clear that employees working more than five hours must be allowed a 30-minute meal period, unless the employee chooses to waive the meal period.¹ However, an employer's responsibility for *ensuring* that employees actually take meal breaks has been less clear. Recently, the Washington Supreme Court answered questions concerning how labor regulations addressing meal periods should be applied and provided more clarity regarding an employer's obligation to ensure that no meal period violations occur.

In *Brady v. AutoZone Stores, Inc.*, the plaintiff sought to certify a class of former employees seeking unpaid wages for alleged withheld meal breaks with the federal district court for the Western District of Washington. In attempting to certify the class, the plaintiff claimed that his employer was strictly liable for failing to ensure the employees received their breaks. The federal district court disagreed ruling that employers are not subject to strict liability for failing to police meal breaks, but rather, an employer's obligation is to relieve its employees of all duty, relinquish control over their activities and permit them a reasonable opportunity to take an uninterrupted break. In other words, the employer has an "affirmative obligation" to ensure that the employee's opportunity for a break "is meaningful and free from coercion or any other impediment." Thus, the district court denied class certification.

Following the federal district court's decision, the plaintiff asked the court to request an opinion from the Washington Supreme Court regarding state law and the meal period statute. The federal district court complied and certified the following two questions regarding meal periods to be answered by the Washington Supreme Court:

1. Is an employer strictly liable under WAC 296-126-092?
2. If an employer is not strictly liable under WAC 296-126-092, does the employee carry the burden to prove that his employer did not permit the employee an opportunity to take a meaningful break as required by WAC 296-126-092?

Consistent with the federal district court's ruling in denying class certification, the Washington Supreme Court answered the first question in the negative in light of the plain language of the statute, which allows employees to waive the meal period requirements. The Court also noted that the Washington State Department of Labor and Industries "'recommends,' but does not require, obtaining a 'written request' from an employee who chooses to wave the meal period."

As to the second question, the Washington Supreme Court affirmed the conclusion in *Pellino v. Brink's Inc.*, 164 Wn. App. 668 (2011), that the meal period statute "imposes a mandatory obligation on the employer," and that "employers have a duty to provide meal periods ... and to ensure the breaks comply with the requirements of WAC 296-126-092 [the meal period statute]." The Court further noted that "while meal periods can be waived, the waiver must be knowing and voluntary, and waiver is an 'affirmative defense' on which defendant employer bears the burden of proof." The Court rejected the defendant employer's and federal district court's reliance on a California Supreme Court case which concluded that "an employer need not ensure

¹ Additional meal periods may be required depending on the number of hours worked.

an employee does no work during off-duty meal periods; an employer's obligation is only to 'provide a meal period to its employees' by offering them a 'reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.'" In affirming *Pellino* and rejecting the California Supreme Court's conclusion, the Washington Supreme Court concluded that "*Pellino* ultimately provides greater protection for workers, it is more in tune with other Washington case law addressing employee rights."

The Court concluded that an employee asserting a meal period violation can establish a *prima facie* case by providing evidence that he or she did not receive a timely meal break. The burden then shifts to the employer to rebut the employee's evidence by showing that in fact no violation occurred or that a valid waiver exists. Accordingly, it is the Washington employer's *affirmative burden* to prove that no meal period violation occurred.

Practical Guidance for Employers. Employers should confirm that policies and practices are in place to ensure that employees are relieved of all duties during meal periods, that employees actually take their meal breaks, and that the meal periods are documented. If the employee prefers to waive the meal period, it is strongly recommended that the waiver be in writing and clearly state that the employee has voluntarily chosen to waive the meal period. Policies regarding meal periods should be clearly communicated in writing to employees, and it is recommended that employees sign an acknowledgement that they have read and understand the employer's policies regarding meal periods. Policies should require employees to immediately report to a supervisor or management employee any occasion when they have missed a meal period.

The cost of litigating wage claims can be significant, and damages awards for successful plaintiffs include attorneys' fees, interest and quite often double damages. As the Washington Supreme Court makes clear in *Brady*, the employer has the burden of proving that no violation of the meal period statute occurred or that a valid waiver existed. Employers should review current policies and practices in place to ensure compliance with the meal period statute.