

WASHINGTON CASE UPDATE

Employer Not Strictly Liable for Missed Meal Breaks

From the desk of John Kreutzer: Under the Washington Administrative Code (“WAC”), employees are entitled to a thirty minute meal period between the second and fifth hours of their shift. If an employee misses a meal break, is the employer automatically (i.e., strictly) liable? If not, who has the burden of proving that a violation of the WAC occurred? Read on to learn more.

Claims Pointer: In this case arising out of a meal break dispute, a federal court asked the Washington Supreme Court to answer two questions about the WAC regulations governing meal breaks. The Court determined that employers are not strictly liable for a missed meal break. The Court also determined that the employee has the initial burden of proving that a violation occurred by demonstrating that he or she missed a meal break, after which the employer may rebut by providing evidence showing that no violation occurred or that the employee validly waived his or her meal break. The case provides important clarity and guidance on how to handle employee meal breaks, an important daily consideration for many employers and their insurers.

Brady v. Autozone Stores, Inc., No. 93564-5, Washington Supreme Court (June 29, 2017)

In September 2013, Michael Brady (“Brady”) filed a class action complaint seeking unpaid wages for meal breaks that his employer, Autozone Inc. (“Autozone”) allegedly withheld from employees. Autozone sought and obtained removal to the federal district court, after which Brady moved to certify a class. The district court determined that Washington had not adopted a strict liability approach regarding meal breaks. Based on this determination, the district court denied Brady’s motion for class certification, reasoning that certifying a class was inappropriate in light of the unique fact scenarios associated with each potential violation of Washington’s meal break regulations. Brady then moved the district court to certify two questions to the Washington Supreme Court, which the district court granted in part. The district court certified two questions to the Supreme Court: (1) is a Washington employer strictly liable under WAC 296-126-092; and (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 to take a meaningful break as required?

The Supreme Court began its analysis by taking

note of the plain language of the applicable regulation. Under WAC 296-126-092, an employee who works five consecutive hours is entitled to a 30 minute meal break, which may be taken from the second through fifth hour of his or her shift. The employee may also choose to waive the meal break requirement. Because an employee may waive the meal break requirement, the Supreme Court determined that an employer is not strictly liable if a meal break is missed.

The Supreme Court then examined the second question of whether the employee has the burden to prove that the employer did not permit the employee to take a meaningful break as required. Brady relied on a Washington case, Pellino v. Brink’s, Inc., to argue that employers had an affirmative duty to ensure their employees take their meal breaks. Autozone, relying on a California case, argued in turn that the employer’s obligation was only to provide a meal period to its employees by offering them a reasonable opportunity to take an uninterrupted thirty-minute break and not impeding or discouraging them from doing so.

The Supreme Court determined that the Washington case, Pellino, provided the better approach, explaining that because Pellino ultimately provided greater protection

case in point...



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for workers, it was more in tune with other Washington case law addressing employee rights. Accordingly, the Court laid out the following framework: an employee asserting a meal break violation under WAC 296-126-092 can meet his or her prima facie case by providing evidence that he or she did not receive a timely meal break. The employer may then rebut this by showing that no violation occurred or that the employee validly waived the meal break. Because employers already track the employee's time for payroll purposes, the Court anticipated that this will not be an onerous burden for employers to meet.

In sum, because employees may waive the meal break requirement, employers cannot be strictly liable if a meal break is missed. When an employee asserts a meal break violation under WAC 296-126-092, the employee can meet his or her burden of proof by providing evidence that he or she did not receive a timely meal break. The burden then shifts to the employer to rebut this by showing that no violation occurred or that a valid waiver exists.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/759515.pdf>

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