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Mid Oregon Personnel

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Oregon Supreme Court Clarifies Rules on Employees' Required Rest Breaks

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Last month, the Oregon Supreme Court reversed the Oregon Court of Appeals, which had held that nonexempt employees in Oregon have private right of action to sue employers for damages, penalty wages, and attorneys' fees based on an employer's failure to provide a the legally required paid 10-minute rest breaks. While this may seem like small potatoes, a claim for failure to pay 10-minute rest periods can add up over time. Under the appellate court ruling, any nonexempt employee who missed breaks would be entitled to double payment (penalty wages), and to his or her attorneys' fees. A series of missed 10-minute rest breaks could set your company back thousands of dollars.

Fortunately, the Oregon Supreme Court has now reversed this ruling, finding that, while missed rest breaks will expose an employer to civil and criminal penalties, it does not provide employees with a private cause of action against an employer.

In *Gafur v. Legacy Good Samaritan Hospital*, the Oregon Court of Appeals unanimously ruled that Oregon wage and hour statutes provide employees with a private right of action to sue their employer when the employer failed to provide *paid* rest breaks. The Court also held that employees do not have a private right of action to sue for missed meal breaks. The Court held that an Oregon statute that provides a private right of

action to employees who are "paid less than the wages to which they are entitled" under other statutes worked in conjunction with a BOLI regulation that requires that employers give their employees paid rest breaks to provide a private right of action.

This decision represented a significant change in the law, and sent many employers into a tailspin to ensure their employees received all legally required breaks.

It came as welcome news to employers when on May 15, 2008, the Oregon Supreme Court finally resolved this critical issue by holding that an employee may not sue an employer for missed breaks. That does not mean, however, that employers are free to ignore the 10-minute break requirement. The Court in *Gafur* made it clear that BOLI is still authorized to assess a civil penalty of up to \$1,000 per violation against any employer willfully failing to provide breaks. This can also add up over time, considering that an employer is subject to \$2,000 in penalties per employee per workday for an average eight-hour workday.

In addition, BOLI has the authority to seek criminal misdemeanor prosecution of employers who violate the rest break requirements.

So, what are the rules on rest



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breaks in Oregon? An employer must provide a paid 10-minute break for adults for every four hours worked or greater part thereof. One minute over two hours is the greater part of four hours. Minors are entitled to 15-minute rest breaks. You should provide the rest break in the middle of each four-hour work segment, and may not tack rest breaks onto a meal break or at the

beginning or end of the workday. The only permitted exception for a rest break is for an adult employee who works alone for a shift less than five hours in a retail or service establishment as long as the employee is permitted to leave the workstation to use the restroom.

What Should Employers Do To Protect Themselves?

While your employees can't sue you over missed rest breaks, employers are still subject to civil and criminal enforcement by BOLI. Consequently, unless your rest breaks are regularly scheduled, employers should still take steps to protect themselves, as follows:

- Require nonexempt employees to sign time cards, whether hard copy or electronic, with a statement on the time card that the employee's

signature or electronic signature verifies that she has received the required number of paid 10-minute rest breaks and appropriate meal breaks, unless otherwise indicated.

- Require employees to clock in and out for rest breaks if you have a clocking system.

- Update your employment manual to include language in the time card section that the employee's signature or electronic signature on the time card verifies that the employee received his or her rest breaks.

- Make it clear in your handbook that breaks are mandatory for nonexempt employees.

- Work with your supervisors and managers to ensure that your nonexempt employees are taking his or her rest breaks.

The reality is that BOLI and Oregon law makes the employer responsible for ensuring that its employees receive his or her rest breaks. Employers should examine how they handle rest breaks to make sure that they can establish that employees were provided the required breaks.

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