

Wage & Hour Insights

Guidance & Solutions for Employers



When does the FLSA require pay for meal periods? [Wage & Hour FAQ]

By [Bill Pokorny](#) on June 30, 2011



Q. A company provides employees with a 30-minute unpaid lunch break. An employee, who is a smoker, has asked if she can take two 5-minute unpaid smoking breaks - one in the morning and one in the afternoon - and reduce her unpaid lunch break to 20 minutes. Is this allowed?

A. No. Under the FLSA, "[bona fide meal periods](#)" are not regarded as work time and can be unpaid. For a break to qualify as a bona fide meal period, "[t]he employee must be completely relieved from duty for purposes of eating regular meals," and the break must generally be at least 30 minutes or longer. The rules do allow that a period shorter than 30 minutes "may be long enough under special circumstances." For example, in a [2004 opinion letter](#), the DOL found that an employer could permissibly reduce its 30-minute unpaid lunch break to 20 minutes and provide an extra 10 to 15-minute paid break, given that the employer and employees' union agreed to the arrangement and that it took employees only one to one and a half minutes to reach the break room once they were relieved from duty.

The question above states that the two additional 5-minute smoking breaks would be unpaid. Under the [FLSA rules](#), this is likely to be problematic, as breaks of short duration - running from 5 to 20 minutes - are regarded as working time and must be paid. Further, although the DOL has recognized situations in which a meal break of less than 30 minutes can be treated as unpaid time, there are no clear rules for determining when this is permissible. Thus, while an employer might be able to get away with treating a 20-minute break as unpaid, particularly if it makes this agreement in exchange for additional paid break time under a union contract, the safer course is to treat any break under 30 minutes as paid time.

Do you have a wage and hour question that you would like us to answer on this blog? If so, contact us! Leave a comment, or e-mail us at wageandhourinsights@franczek.com. (Please, general and hypothetical questions only as inquiries may be posted publicly. If you are an employer and need legal counsel, please contact the [authors](#) or any of [our attorneys](#) directly to discuss your situation.)

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