

## Overstaying Rest Breaks: Round Two

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Our earlier post about the U.S. Labor Department's position on unauthorized extensions of rest breaks has generated additional comments and questions. We have responded to one comment at length beneath the post itself.

Another reader took the Labor Department's interpretation to mean that, if an employee impermissibly extends his or her rest break, then the *whole rest break* could be treated as non-compensable time under the federal Fair Labor Standards Act. In that reader's view, for example, if an employee stretches a ten-minute rest break to 20 minutes, then the full 20-minute period could be excluded from worktime, rather than only the additional ten minutes.

The Labor Department has said that this is not the case. In *Opinion Letter of Wage-Hour Acting Administrator FLSA2001-16* (May 19, 2001), an employer asked the U.S. Wage and Hour Division whether an employee's unauthorized extension of a rest break under the conditions in Section 31a01(c), *Field Operations Handbook* (U.S. Labor Department, December 15, 2000), allowed the exclusion of the entire rest break from compensable time. According to the Acting Administrator, "[o]nly the length of the unauthorized extension of an authorized break will not be considered hours worked when the three conditions are met, not the entire break." In our illustration, then, the Labor Department would say that only the additional ten minutes could be treated as non-compensable time.

It also appears that some readers were not distinguishing among different kinds of breaks. For purposes of what is and is not FLSA worktime under Labor Department interpretations, it can be useful to view scheduled breaks as falling into essentially three categories:

- ◇ Bona fide meal breaks, which are typically non-compensable time (29 C.F.R. § 785.19);
- ◇ "Short" rest breaks of "about 20 minutes" or less, which the Labor Department says are typically compensable time (29 C.F.R. § 785.18); and
- ◇ Break periods which are neither meal breaks nor "short" rest breaks, which might or might not be compensable time (Section 31a01(b), *Field Operations Handbook* (U.S. Labor Department, December 15, 2000), link to reproduction below).

Employers should evaluate these categories differently in deciding whether and to what extent to treat them as being compensable hours worked under the FLSA.

And once again, employers must also be aware of and comply with whatever are the applicable break obligations of a state or another jurisdiction.

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