

THE WAGE HOUR DIVISION IS WATCHING YOUR EMPLOYEES EAT LUNCH.

13. August 2010 By Steve Palazzolo

The Wage Hour Division of the Department of Labor is getting a bit more aggressive. Among other things, DOL has hired a bunch of new investigators and implemented a program they call “Plan, Prevent and Protect”

(<http://negotiumlex.wnj.com/?p=250>) and another program the DOL calls “We Can Help”

(<http://negotiumlex.wnj.com/?p=234>).

The New York Times did an interesting article on an initial step in the WHD’s more aggressive stance. Seems the WHD is, according to the *Times*, targeting hospitals and nursing homes looking for Fair Labor Standards Act violations. See http://www.nytimes.com/2010/08/10/health/policy/10health.html?_r=1.

According to the *Times*, hospitals in particular are being singled out for misclassifying employees as supervisors and for failing to pay employees who work overtime or through their meal periods. We will leave the misclassification issue for another day, but let’s take a second and talk about those meal periods.

The regulations implementing the FLSA state:

(a) Bona fide meal periods. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. 29 CFR § 785.19

So generally speaking, if you don’t want to pay your non-exempt employees for lunch, the meal break has to be at least 30 minutes long and the employee has to be completely relieved of all duties. That’s got to be hard to do for some employees, and I imagine nurses are among the most difficult to deal with. How do you handle this if you are a manager? Here is what you can’t do: you can’t tell the employee to not work during meal breaks and then refuse to pay them when they do. 29 CFR § 785.13 says: “In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.”

That means that as a manager you need to make sure that the employee has uninterrupted time to eat lunch or you have to pay your employees when they work during lunch. How do you make sure that an employee has uninterrupted time to eat? You can start by not letting employees eat at their work station. Send them to the break room. And make sure employees know that when an emergency does arise and they have to work during lunch that they account for that time so they are properly paid. In the long run, that is a lot less expensive for you than paying the liquidated damages and attorney fees that come with a wage hour suit.