

## **DON'T GET CAUGHT WITH YOUR PANTS DOWN - RESTROOM AND MEAL BREAKS UNDER MINNESOTA LAW**

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Employee meal and restroom breaks are mandatory under the law. However, they may not be what you think. To begin with, they are regulated by state, not federal law. For a state-by-state survey, see: <http://www.dol.gov/esa/whd/state/meal.htm>

There is a popular misconception that an employee "gets" an unpaid 30 minute meal break if he or she works a continuous eight hour shift. Under Minnesota law, an employee is merely entitled to "sufficient" time to eat a meal. The statute does not define the term "sufficient." By administrative regulation, 30 minutes is "ordinarily" deemed long enough, but a shorter time may be adequate "under special conditions." In reliance on this regulation, at least one federal court judge has ruled that breaks must be no less than 30 minutes unless the employer is able to prove that extenuating circumstances warrant a shorter period. *Frank v. Gold'n Plump Poultry, Inc.*, 2007 WL 2780504, 9 (D.Minn. 2007). Consequently, despite the statute's use of the term "sufficient," an employer's safest course would be to provide for meal breaks of a full 30 minutes. There is no requirement that an employer pay its employees for the mandated meal break, however, whatever its length. By regulation, a bona fide meal break occurs only when an employee is **completely** relieved from duty. If an employee is not completely relieved of duties, he or she must be paid for the meal break. The proverbial "working lunch" is "on the clock."

Minnesota law also requires that an employee be given an "adequate" period of time for a restroom break for every four hours worked. Neither the statute nor any regulations define the word "adequate." If the restroom break is 20 minutes or less, it must be a "paid" break. Fifteen minutes is the convention, although it is not set in the statute. Interestingly, an employer's violation of the restroom break rule, but not the meal break rule, is a misdemeanor offense that can be prosecuted by the Minnesota Department of Labor.

If an employee is terminated or subjected to retaliation for reporting a violation of these or any other wage and hour statute, the employer may be subjected to a fine of not less than \$700 and not more than \$3,000. Neither of the break statutes expressly allows for a private cause of action. Bearing this in mind, a federal court recently ruled that an employer's failure to provide meal or restroom breaks does not, without more, permit a claim for damages by an employee under federal or state law. *Bolin v. Japs-Olson Co.*, 2008 WL 1699531, 3 (D.Minn. 2008). However, an employer that **does** comply with the restroom break law may be subject to expensive litigation if it fails to actually pay its employees for breaks of 20 minutes or less. In the case *Braun v. Wal-Mart Stores, Inc.*, 2003 WL 22990114, 13 (Minn. Dist. Ct. 2003), for instance, a Minnesota state court certified a class action on behalf of employees who claimed they were not paid for restroom breaks. Employees who prevail in such lawsuits may recover attorney fees and penalties, in addition to unpaid wages.

If you are an employer seeking guidance in creating break policies or employee handbooks reflecting the same, the employment lawyers at Mansfield, Tanick & Cohen, P.A., are available to assist you in staying in compliance with the law. If you are an employee who feels that you

have been deprived of your rights under Minnesota's break laws, give us a call and we will be glad to review your potential claim.

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