

## At Will Employees Are (Generally) Not Entitled to a Lunch Break

There is a common perception among members of the general public that employers are required to allow their employees a lunch break. This is generally not true in Pennsylvania or nationally, with exceptions. There is no Pennsylvania or federal law that requires that an employer allow its “at will”<sup>1</sup> employees to take a lunch break or even a rest break.

The common misconception that there is such a law probably comes from the presence of a provision in virtually every union contract that mandates that union employees receive a paid half-hour lunch break and two paid 15-minute rest breaks. This is a bargained-for benefit that is not generally available to non-union employees who do not have an individual employment contract that provides for lunch and/or break periods through the day.

Protections against overtime abuse in the federal Fair Labor Standards Act (“FLSA”) are another possible source for the misconception that workers are entitled to lunch breaks. In those situations where an employer *does* permit lunch and/or rest breaks, it must pay overtime for periods of break time that exceed 40 hours per week, where the employee remains predominantly under the control of the employer and is, in effect, required to “work” during those breaks. Federal law also mandates that *if* an employer provides a lunch period, it is counted as “hours worked” and must be paid UNLESS the lunch period lasts at least thirty minutes and the employee is completely uninterrupted and free from work.

For example, if a firefighter is entitled to a half-hour lunch period, but remains “on call” during that time, he is entitled to be paid for that lunch period. And, if those lunch periods should result in the firefighter working more than 40 hours per week, he/she is entitled to be paid overtime, at 1 ½ times his/her regular rate of pay, for any of that time worked that exceeds 40 hours in a week.

There are also several state exceptions to the general rule. For example, in Oregon, employers are required to allow a ½ hour lunch break to all workers who work at least 6 hours in a day. Under Oregon law, the typical adult employee whose work period is eight hours long must receive at least a 30-minute unpaid meal period and two paid ten-minute rest breaks. Although the Fair Labor Standards Act covers most Oregon employers and does not require rest breaks or meal periods, employers must comply with the law that is most beneficial to the employee, in this case, the Oregon law. Massachusetts law requires a 30-minute lunch period, but does not require breaks. Although many employers do provide time for one or two breaks during the work day in addition to time for lunch, they are not required to do so. The law in Massachusetts states that an employer must provide a 30-minute meal break during each work shift that lasts more than six hours. This one half-hour meal break is unpaid. In addition, Massachusetts law does not require employers to provide any rest breaks.

In California, state law requires a 30-minute meal break every five hours of work, along with a 10-minute break during every four working hours. Only wholesale bakers and film and broadcasting employees are exempt. In Vermont, an employer must provide its employees with “reasonable opportunity” to eat and use toilet facilities in order to protect the health and hygiene of the

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<sup>1</sup> At will employees are, generally, those employees in private industry that are not members of a collective bargaining unit (union); do not have an individual employment contract; and/or are not protected by state or federal civil service laws, rules and regulations.

employee. In New York, employees who work a shift of more than six hours starting before 11 A.M. and continuing until 2 P.M. must have an uninterrupted (unpaid) lunch period of at least half an hour between 11 A.M. and 2 P.M.

In England, most workers have the right to take breaks, but whether or not they are paid depends on the terms of an employment contract, if the employee has one. The amount of break time an employee gets is usually agreed with an employer. It may be written down somewhere (e.g. in a contract of employment) or might just be part of an employer's standard practice.

Conversely, in Maryland and many other states, including Pennsylvania, there is no law requiring an employer to provide breaks, including lunch breaks, for workers 18 years old or older. An employer who chooses to provide a break, however, does not have to pay wages for lunch periods or other breaks in excess of 20 minutes where the employee is free to leave the worksite (or workstation if leaving the workplace is physically impractical), in fact takes their lunch or break (whether freely choosing to leave or remain at the worksite), **and** the employee does not actually perform work.

Since there is no uniform rule or law, the next time someone tells you that employers are required to give lunch breaks, the correct answer would be "That depends on your employer and/or where you live, but you better ask your attorney, just to be sure."

Should you have any questions concerning lunch breaks, overtime or any other Employment-Law-related matter, do not hesitate to contact me at 1-877-LAW-2555.

Keith E. Kendall  
Attorney-At-Law  
Scaringi & Scaringi, PC

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