

Sixth Circuit: Interruptions During meal Period do not Automatically Render time Compensable

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Yesterday we told you about the California Court of Appeals' decision in which the court found that it was not unlawful for an employer to require its security guards to be "on call" during rest periods. The 6th Circuit reached a similar conclusion, but with respect to meal periods.

In *Ruffin v. MotorCity Casino*, No. 14-1444 (6th Cir., January 7, 2015), the security guards at the casino were required to work five, eight-hour shifts each week. During their thirty-minute meal period, they were free to eat, drink, socialize, etc., but they could not leave casino property or have visitors, and they were required to monitor their radios during meal periods. A group of current and former guards filed suit against the employer, claiming that they were deprived of overtime wages because their meal periods constituted working time, and were thus compensable. The casino moved for summary judgment and the district court held the meal periods were not compensable and thus, no overtime was owed. The employees appealed.

The 6th Circuit Court of Appeals [affirmed the grant of summary judgment in favor of the casino](#), finding no reasonable jury could find that the meal periods predominantly benefited the casino and were thus compensable.

In reaching this conclusion, the Court first looked to the Fair Labor Standards Act, which provides that employers must pay employees for "work" performed, which is "work" that is controlled or required by the employer, and pursued necessarily and primarily for the employer. The FLSA notes that time spent predominantly for the employer's benefit during meal periods is still working time which is compensable. Whether the time is "predominantly for the employer's benefit," however, is the tricky part, and depends on the totality of the circumstances.

Here, the Court found that the employees were not engaged in the performance of any "substantial duties" during the meal period. Other courts have held that simply carrying a radio during breaks does not, in and of itself, convert a meal period to compensable work time. The guards did not show that carrying/monitoring the radio interfered with or prevented them from enjoying their usual lunch break activities.

Additionally, the Court held that *de minimis* interruptions during the meal period do not convert that time to compensable time. Where the interruptions are often, frequent, or regular, however, the time could be compensable. In this case, however, there was no evidence that calls regularly interrupted meal periods. Rather, the guards stipulated that the interruptions occurred “occasionally.”

Finally, the Court considered the fact that guards could not leave the premises to determine whether that rendered the time spent on meal break compensable. The conclusion was that it did not. In reaching a determination on this issue, the Court noted that the relevant inquiry is “whether the employer requires an employee to take meals on the premises as an indirect or round-about way of extracting unpaid work from the employee.” Here, the evidence failed to show that requiring on-property meal periods predominantly benefited the casino.

While this case does not wholesale condone the right of an employer to keep employees on site during meal periods, or require employees to monitor events which transpire during their meal periods, it provides a good discussion on when such things are permissible under the FLSA. Though the meal periods in this case may have been deemed permissible and thus, non-compensable under the FLSA, employers should consult with counsel to ensure that their policies comply not only with federal law, but also applicable state law. With questions, contact Hinshaw’s San Francisco office.

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