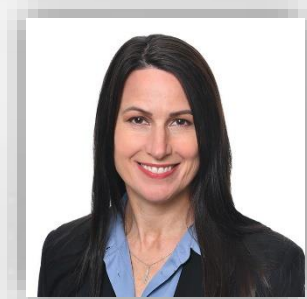
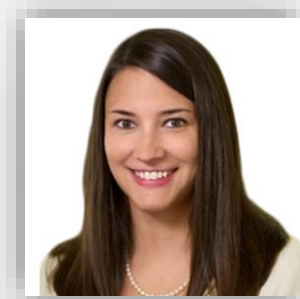


Buchalter

Class Action Alert—PNW Employers in the Crosshairs for Meal/Rest Period Claims



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Introduction

Why does this matter?

What are the rules?

What should I be looking for?

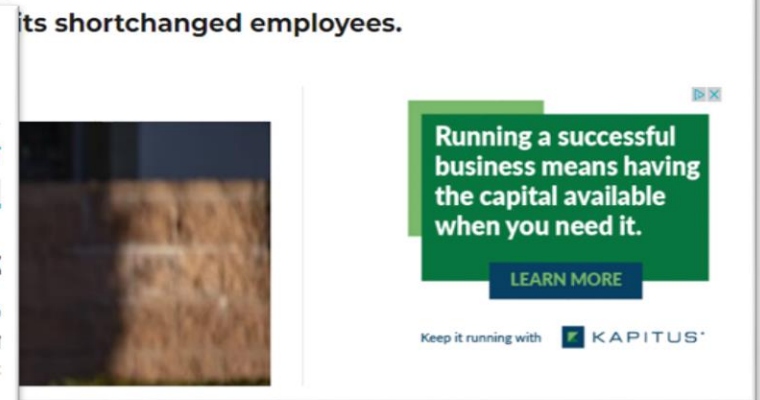
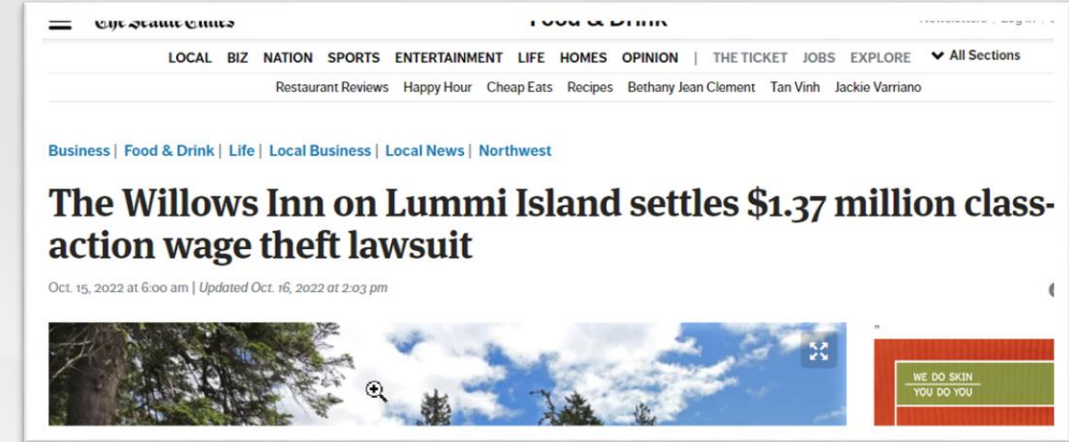
How can I reduce risk/liability exposure?

What should I do if I find a problem?



Why Does This matter?

- Lawsuits
- Attorneys fees (theirs and yours)
- Other claims (record keeping, failure to pay wages at termination, minimum wage, overtime)
- Penalties (double damages, penalty wages)
- Bad publicity
- Poor moral



Damages Are Like Rabbits...

Employee Ed has worked for the company for three years, his wage rate is \$22/hour.

Over a three year period, Ed takes a short, 25-29 minute meal period every other week: 78 short meal periods. Once a month, he takes a late meal period: 36 untimely meal periods.

Ed never complains about his non-compliant meal periods.

Ed quits for a better job and is timely paid his final paycheck.

114 non-compliant meal periods: $114 \times \$11$ (.5 hours @ \$22/hour) = \$1,254

Penalty wages under WA law: \$1,254

Total: \$2,508

45 employees = \$112,860

Minimum wage violations

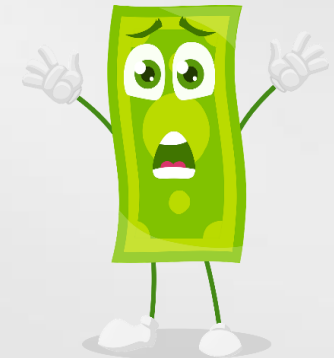
Overtime violations

Sick time accrual violations

*Failure to pay wages at termination**

Attorneys' fees

Individual liability



Meal And Rest Period Basics

- Non-exempt employees are entitled to unpaid meal and paid rest breaks depending on the length of shift that they work
- Meal periods must be at least 30 **uninterrupted** minutes
- Rest periods must be at least 10 minutes
- Meal and rest periods cannot be combined
- Employees generally cannot choose to skip or modify their meal or rest periods



Washington Meal Periods

- Non-exempt employees must be allowed a meal period when they work more than five hours in a shift.
 - A meal period must be at least 30 minutes long and start between the second and fifth hour of the shift.
 - **Issue: an employee's shift is scheduled for 5 hours, but they work 5.5 without a meal period...**
- Employees working three or more hours longer than a normal work day shall be allowed at least one 30 minute meal period prior to or during the overtime period.
 - Additional 30-minute meal periods must be given within five hours from the end of the first meal period and for each additional five hours worked.

Washington Meal Periods Cont'd

- A meal period may be unpaid if the employee is free from all duties for their entire break. Employees can only be required to remain on the premises or work site during their meal period if they are completely free from work duties.
- A meal period **must be paid if**:
 - The employee is required to remain on duty;
 - The employer requires the employee to remain on-call on the premises or work site in the interest of the employer, even if the employee is not called back to duty; or
 - The employee is called back to work, interrupting the meal period.
- Employees who are required to work or remain on duty during a meal break are still entitled to 30 total minutes of mealtime, excluding interruptions. The entire meal period must be paid regardless of the number of interruptions.
Work performed during meal breaks is considered "hours worked" when calculating paid sick leave and overtime.

Washington Rest Periods

- A “rest period” means to stop work duties, exertions, or activities for personal rest and relaxation
- Employees must receive a 10 minute rest period for every four hours worked
- Employees cannot be required to work **more than three hours** without a rest break
- Breaks must be scheduled as close to the midpoint of a work period as possible
- Employers can require workers to stay on the job site during a rest break
- “Intermittent” rest periods are permitted—*i.e.*, the employee can take several mini breaks per four hour period of work, as long as they add up to 10 minutes



Oregon Meal Periods

- Non-exempt employees must be allowed a 30-minute unpaid meal period when they work six or more hours in a shift.
 - If the shift is at least six hours but less than seven hours, the meal period is to be taken after the second hour worked and prior to the commencement of the fifth hour worked.
 - If the shift is more than seven hours, the meal period is to be taken after the third hour worked and prior to the commencement sixth hour worked.
- Additional meal periods are required to be provided to employees who work 14 hours or more in a shift.
- A meal period may be unpaid if the employee is free from all duties for their entire break.
- Employers may require the employee to remain on premises as long as the employee is relieved of all duties. If the employee is on-call during that time, the employee is not relieved of all duties.*

Oregon Rest Periods

- Employees must receive a 10 minute rest period for every segment of four hours or major part thereof worked in one shift.
- The rest period should be taken as nearly as possible in the middle of the work segment.
- Employees cannot add the rest period to a meal period or deduct rest periods from the beginning or end of the employee's work shift.
- Employers can require workers to stay on the job site during a rest break
- Oregon does not permit intermittent rest periods



<https://www.oregon.gov/boli/workers/pages/meals-and-breaks.aspx>

What Should I Be Looking For?

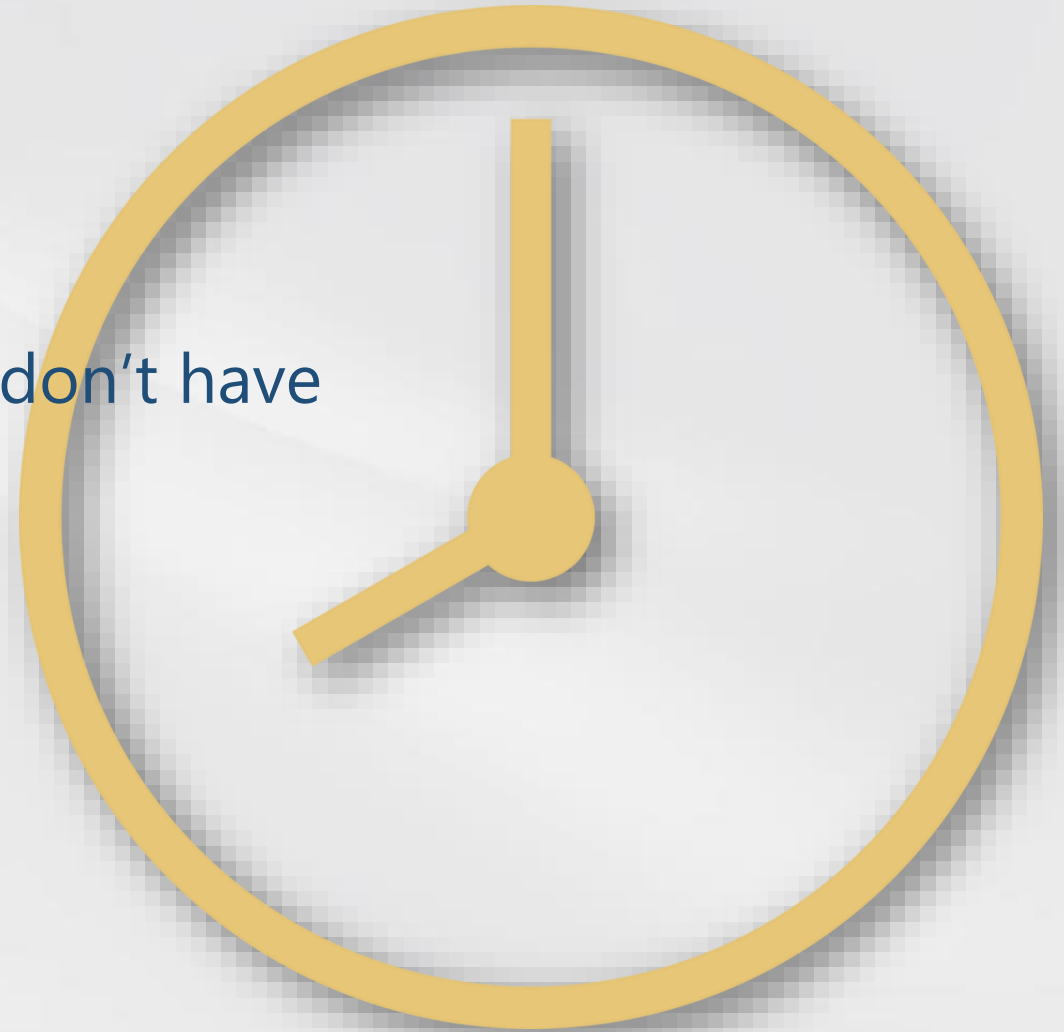
Understand what data you have

- Schedules
- Punch reports
- Paychecks

Understand what safeguards you have/don't have

- Error reports
- Corrections*
- Acknowledgments
- Auto-payments

Audit your time records regularly



Examples

6.23	0.00	\$0.00	\$0.00	Sun	PM	2/14/21 2:01 PM	PM	2/14/21 8:15 PM
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➤ Over 5 hours and no meal period

8.35	0.00	\$14.00	\$116.89	Thu	3/11/21 7:44 AM	3/11/21 4:29 PM
0.40				Thu	3/11/21 12:56 PM	3/11/21 1:20 PM

➤ Over 5 hours with no meal period and less than 30 minutes.

10.99	2.26	\$14.00	\$201.39	Sat	3/6/21 5:40 AM	3/6/21 7:09 PM
0.22				Sat	3/6/21 3:30 PM	3/6/21 3:43 PM

➤ Over 5 hours with no meal period and less than 30 minutes and late.

Common Meal Period Misconceptions/Mistakes

Assuming a tiny interruption to the meal period doesn't matter. Train your employees to say no to workplace interruptions and encourage them to report such interruptions (you should discipline the interrupter).

Making automatic deductions for meal periods.



Time card corrections without accountability.

Assuming that no complaints means no problems.

Assuming everyone knows the rules because they're written in the handbook.

Assuming you only need to offer employees the opportunity to take compliant meal and rest periods.

What Doesn't Matter...

Things that **will not** save an employer from liability:

My employees don't want to take their breaks

I had no idea that employees weren't getting appropriate meal/rest periods

We were short handed/understaffed

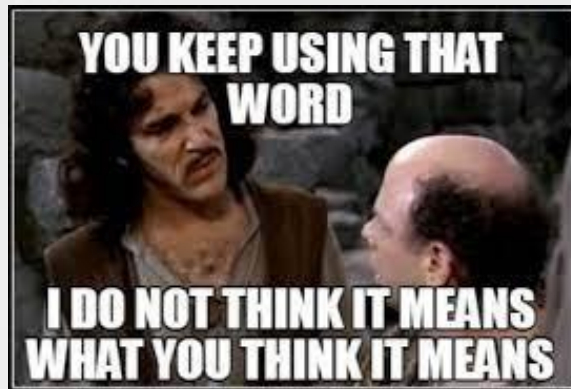
The employee ignored her meal period that was written on the schedule

We gave the employees extra smoking breaks/let them make personal calls on the clock

The employee worked past their 5 hour shift and didn't need to (putting them over 5 hours)

We had a patient emergency

"Willfulness"



What Can I Do To Reduce Risk/Exposure?

- **Update your policies**
 - Make sure you have Oregon-specific and/or Washington-specific policies instead of a generic, catch-all policy.
 - Your policy should describe the measures an employee should take to report a missed meal or rest period.
- **Have accurate and thorough documentation**
 - All meal periods should be documented through timekeeping and payroll records
- **Proactively compensate employees for missed meal periods.**

What Can I Do To Reduce Risk/Exposure?



- **Enforce your policies**
 - Create a schedule that is compliant with your state's applicable laws
 - Discipline employees, where appropriate
 - An employer's recourse for a policy violation is to discipline the employee, not to withhold compensation.
 - Discipline may start with just a warning/reminder to follow company policy and should escalate for repeat offenders.
- **Obtain employee waivers**
 - In **Washington**, employees can voluntarily agree to waive their meal periods, regardless of the industry. The best practice is to obtain a signed, written agreement from the employee.
 - In **Oregon**, employees serving food or beverages who receive tips and report the tips to their employer can voluntarily agree to waive their meal periods.
 - An employee can revoke a waiver at any time.
 - **Employees cannot waive rest period requirements.**

What Can I Do To Reduce Risk/Exposure?

- Apply for a **variance**, if appropriate:
 - In **Washington**, employers may file a Variance Application to modify rest and meal break requirements, with a showing of “good cause.”
 - “Good cause” means where the employer’s circumstances warrants an alternative procedure that would not have a harmful effect on the health, safety, and welfare of the employees involved.
 - In **Oregon**, if an employer can demonstrate an undue hardship on the operation of the business, the employer can complete a Notice to Employees Regarding Meal and Rest Periods (BOLI form) and provide to affected employees.
 - “Undue hardship” means significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer’s business.

Practical Tips For Compliance

(Re)train managers and employees (separately)

Designate an meal/rest period czar

Conduct regular internal (privileged) audits

Check in with your employees

Look into wage/hour EPLI insurance

Payroll Compliance

Talk with you payroll vendor about system options/changes:

- **Flag non-compliant meal periods**
- **Do not round.** Keep only actual rather than rounded time entries.
- **Use drop down menus for non-compliant meal period** (“(a) employee was provided a chance to take a meal period but chose to take a shorter period, or (b) was not provided an opportunity to take a meal period”). Immediately pay and investigate/discipline.
- **Require written attestations of accuracy and compliance.** Consider requiring employees to attest to both time entries’ accuracy and compliance — ideally per day or pay period, depending on your timekeeper’s capabilities.
- **Consider a exact 30-minute flag if employees manually enter their time.**

Yikes! We Aren't Doing It Right! Now What?

Correct it! This will cut off liability moving forward.

Assess how widespread the problem is.

Assess your potential liability.

Weigh the business risks of proactively compensating employees for non-compliant meal and rest periods.

Consider offering more than the employee is owed in exchange for a release of claims.



Questions?

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