DOL OKs Automatic Deductions for Meal Breaks

But Attorney Warns That Practice Is Not as Safe as Non-Administrative Opinion Letter May Suggest

Automatically deducting the same amount of time for lunch every workday for nonexempt employees would make life easier for many employers.

The U.S. Department of Labor (DOL) issued a non-administrative opinion letter approving the practice for a long-term healthcare facility for elderly and disabled residents.

However, according to at least one attorney, employers should consider carefully several risks before adopting such a policy.

Details of the Letter

The employer addressed in the opinion letter had proposed changing its lunchtime recordkeeping policy from one requiring employees to clock out and in for lunch to one with an automatic 30-minute lunchtime deduction “because of numerous problems arising from [the time clock] practice.”

The letter points out that the Fair Labor Standards Act (FLSA) does not require that any particular timekeeping device — such as a time clock — be used to record work hours (29 C.F.R. §516.1(a), 29 C.F.R. §785.48).

However, as the letter also notes, the FLSA does require that accurate records be kept of the number of hours worked by nonexempt employees (29 C.F.R. §516.2(a)(7)). And courts have ruled that these hours may not be estimated or averaged (Wirtz v. Williams, 369 F.2d 783 (5th Cir. 1966); McComb v. La Casa Del Transporte Inc., 167 F.2d 209 (1st Cir. 1948)) (see ¶103 of the Handbook).

“Discontinu[ing] the use of a time clock to record the meal period does not violate the FLSA so long as the employer accurately records actual hours worked, including any work performed during the lunch period,” the letter states.

Employer Beware

Employers should be cautious when considering whether to use automatic meal deductions, according to Brett Bartlett, a management attorney in the Atlanta office of the national law firm Seyfarth Shaw LLP.

Automatic meal-break deductions are attractive for many reasons, particularly in states, such as California and Illinois, whose laws require that employers provide and keep records of employee meal breaks (see box, below). However, while automatic meal-break deductions ensure a record of meal breaks, they do not guarantee that employees actually take the breaks — or that their breaks were uninterrupted by work. For example, subject to a 30-minute automatic deduction policy, the weekly time report for an employee who worked five full days would indicate that the employee took a total of 2.5 hours away from work for his or her meal breaks. Yet, unless his or her working time was confirmed in some other way — such as having the employee review and certify the accuracy of his or her timesheets — the automatic 2.5 “meal hours” might prove problematic, as the employee’s break might have been interrupted by unanticipated work or might not have been taken at all.

Because the FLSA places the burden on the employer to keep accurate records of employees’ work hours (29 C.F.R. §211(c)), and because courts presume employees’ (reasonable) claims about their working hours are true when an employer’s time records are found to be inaccurate.

State Meal Break Requirements May Prove Problematic for Automatic Deductions

While a practice of automatically deducting time for lunch (see story, above) may be suitable under certain circumstances, it can raise challenges for many employers, said Brett Bartlett, a management attorney in Seyfarth Shaw LLP’s Atlanta office.

For one thing, while the Fair Labor Standards Act (FLSA) does not require employers to provide meal breaks to their employees, many states have specific meal break requirements, including some that employers keep records of their employees’ meal times (see ¶105 of the Handbook).

When the FLSA and state regulations cover the same activity, the FLSA requires employers to comply with the directive that is most beneficial to employees (29 U.S.C. §218). Employers with operations in several states also should be mindful of differences among state laws about meal breaks, Bartlett noted.

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