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Need a Break? Understand Break Laws First

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The holiday season has passed, and hopefully spring is upon us. With spring comes spring break and so many other activities. Many of us and our employees could use a break. Before they do, let's have a refresher regarding break laws under the Fair Labor Standards Act ("FLSA"), the Providing Urgent Maternal Protections for Nursing Mothers Act (the "PUMP Act"), and Ohio law.

Under both the FLSA and Ohio law, employers are not legally required to provide meal periods or break times, except for bathroom breaks, unless the employee is a minor. Minors must be provided an unpaid rest period of at least 30 minutes for 5 consecutive hours of work. If the employer chooses to provide breaks to employees, then the FLSA requires employers to compensate employees for any bathroom break, coffee break, or other type of break of 20 minutes or less. Therefore, any policy requiring employees to clock in and out for short breaks would be a violation of the FLSA.

To be uncompensated, the break or meal period must generally be at least 30 minutes in length and the employee must be completely relieved from all employment duties. Employers should be cautious of utilizing automatic deductions for meal periods. Employees could work through a designated meal period or long break, and thus be entitled to pay for that time, or could only utilize a portion of the meal period and work the remaining portion. To avoid any improper deductions from pay, it is best to require employees to clock in and out prior to taking their meal period. This allows for employers to see exactly what times the employee was on break rather than making improper assumptions that result in not paying the employee for hours worked. If you do utilize an automatic deduction for meal breaks, be sure to have a mechanism in place to allow the employee to report that they worked through the break. Supervisors should also be proactive to make a notation or provide approval of any time they are aware an employee has worked during a meal break.

Finally, as of December 29, 2022, the PUMP Act requires all employers to provide reasonable break times for all employees, including exempt employees, to express breast milk as needed in a space, other than a bathroom, shielded from view, and free from intrusion. The break does not have to be compensated; however, if the employee is not completely relieved from work duties during the break, then the break will be considered a part of the employee's hours worked. This reasonable break time should be provided for up to one year after the employee gives birth. Employers with fewer than 50 employees are not subject to the PUMP Act if they can establish undue hardship, which is a case-by-case analysis. The PUMP Act is effective April 28, 2023. Employers should revisit their break policies and their office spaces to ensure compliance.

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