



Human Resources

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Hoteliers beware: Is there no such thing as a free lunch?

*Another great article from The Rooms Chronicle, the #1 journal for hotel rooms management! ***Important notice: This article may not be reproduced without permission of the publisher or the author.*** College of Hospitality and Tourism Management, Niagara University, P.O. Box 2036, Niagara University, NY 14109-2036. Phone: 866-Read TRC. E-mail: editor@roomschronicle.com*

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Hoteliers should be on alert: Wal-Mart's alleged violation of labor and employment laws offers a key lesson for hoteliers. As the employer's recent state court case illustrates, failing to provide employees with meal breaks required under state law poses significant liability risks.

The federal Fair Labor Standards Act (FLSA) does not require hoteliers to provide meal breaks to employees. It does, however, prohibit hoteliers from treating non-exempt employees' meal breaks as non-working hours unless the employees are entirely relieved of duty for at least thirty minutes. Thus, under federal law, a hotelier is not required to provide a meal break to an employee, but if the employee takes a meal break of less than thirty minutes, the employee must be paid for the time taken as a meal break. Many states have established their own meal and break period provisions, which may affect the timing and payment of break periods.

For example, for most hoteliers, California mandates that an employee who works more than five hours per day must receive a meal period of at least thirty minutes. If the employee works no more than six hours in a day, the employee and the hotelier may mutually agree to waive the meal period. If an employee works more than ten hours per day, the employee must receive a second meal period of not less than thirty minutes. If the employee works no more than twelve hours, the second meal period can be waived by mutual consent of the employee and the hotelier, provided that the first meal period was not waived.

A recent California case, one of over two dozen state law claims against Wal-Mart, one of the nation's largest retailers, alleged violations of state meal period requirements for nearly 116,000 employees. Wal-Mart admitted that it had struggled to comply with California's requirements prior to the release of new rules by the California government in 2001. However, Wal-Mart claimed that it had taken steps to ensure that all employees receive their meal periods. The steps included adopting new technology that sends alerts to cashiers when it is time for them to take their meal breaks. The technology goes as far as automatically shutting down a cashier's register if the cashier does not respond.

Unfortunately for Wal-Mart, the jury found for the employees, awarding them nearly \$58 million for missed meal periods and \$115 million in punitive damages. The jury concluded that Wal-Mart had violated the law by failing to provide employees with the meal periods required by the law. Wal-Mart has vowed to appeal the punitive damages as being inconsistent with the structure of the law.

Fortunately for Wal-Mart, the jury reduced the original award to the employees by more than \$6 million because some of the employees had failed to substantially comply with the employer's instructions for taking meal periods. Although this reduction pales in comparison to the amount awarded, it highlights the importance of establishing clear policies and practices regarding meal periods.

Hoteliers should learn the valuable lesson offered from Wal-Mart's experience. Specifically, hoteliers should carefully review state meal period requirements and should ensure that all covered employees are aware of and receive the required meal period. Failing to provide appropriate meal breaks or pay appropriately when employees take meal breaks of less than thirty minutes can result in substantial penalties. Establishing and enforcing meal period policies can be important even where state law does not address meal breaks because of the FLSA's requirement that meal periods of less than thirty minutes be counted as paid working time. ✧

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