



## Missed breaks and off-the-clock work can lead to enormous jury awards

*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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With the rise in wage and hour claims, and their potential for steep penalties, hoteliers should be vigilant about monitoring hourly employees. The number and scope of lawsuits brought under wage and hour laws is on the rise. Not only are claims being made under federal law, but many cases, including an increasing number of class actions, are being brought under state laws throughout the country.

Many claims seek compensation for missed breaks and off-the-clock work. Although state law governs

whether employers are required to provide meal breaks, rest periods, and how long and how frequent such breaks must be, all employers should review their policies and practices to ensure that hourly, non-exempt employees are paid for all time worked. In addition, employers should take steps to ensure that compliance with internal policies are being followed, and consider whether they would be able to prove that hourly employees were properly paid in the event of a challenge.

### Every minute counts

In a recent case against a national retail giant, a state court jury in Pennsylvania awarded over \$78,000,000 to a class of 170,000 hourly employees who alleged that the company violated state law by failing to compensate them for off-the-clock work and missed breaks. The company may owe an additional \$62,000,000 in liquidated damages based on the argument that the company acted in bad faith.

In this case, the employer's policies provided for paid rest breaks and an unpaid meal break. Employees, however, argued that they were asked or encouraged to work through their breaks and perform work after they were "off the clock." The employer argued that many people took breaks but did not swipe out, or that they worked through the breaks because they wanted to keep working.

Nevertheless, the jury sided with the employees and found the company liable. While state statutes of limitations vary, this particular case included employees who worked for the company as far back as 1998 to the present as part of the class action lawsuit.

### Two sacred rules to follow

As evidenced by this decision, hoteliers must be cautious when implementing policies and procedures for hourly employees. At a minimum, this means:

1. Ensure that employees are paid for all time worked, and
2. Ensure that employees take required breaks.

### Something to think about

On an average occupancy day a 300-room deluxe hotel will schedule approximately 25 housekeeping and laundry personnel. If these employees were accorded by state labor law two 15-minute paid breaks each eight-hour shift, but the housekeeping manager encouraged her employees to work through the breaks, the department's year end total for uncompensated break time would equal 273,750 minutes or 4,532 hours. If the average housekeeping employee was paid \$9.00/hour in pay and benefits, this would result in uncompensated break time totaling \$41,062 a year for the Housekeeping department alone. It's a sure bet that someone will take exception to this practice, whether it be the hotel's employees, a union looking to make inroads into the hotel, or a plaintiff's attorney looking to institute a class action lawsuit.

More and more cases are being brought as class actions, so a few minutes of missed breaks or off-the-clock work each day can add up to hefty damages when multiplied by the number of affected employees, and the number of years that the court can go back to assess liability.

In order to best protect against liability, hoteliers should first familiarize themselves with their state's laws regarding meal breaks and rest periods, and implement policies to conform to these laws. Also, as required by law, employers should keep a record of time worked by hourly employees, including recording breaks. For example, if an employee is required to take a half-hour unpaid break, they should ensure that the break is taken and recorded on the time record. If the break is paid, the time record should still reflect that it was taken and that it was paid. Most importantly, supervisors should be trained to monitor employees to make sure they are taking duty-free breaks when required, and that off-the-clock work is not performed under any circumstances. Supervisors should also be responsible for reviewing time records at the end of each shift or week to assure accuracy, and face discipline or discharge for failure to enforce the employer's policies. ✧

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