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## THIRD CIRCUIT ADOPTS 'PREDOMINANT BENEFIT' TEST FOR PAID MEAL BREAKS UNDER FLSA

By Franz Español

Employers are required by federal law to pay for an employee's meal break only when the employee is primarily engaged in work-related duties during the meal break, the Third Circuit Court of Appeals has ruled.

In its November 24 decision in *Babcock, et al. v. Butler County*, No. 14-1467, the Third Circuit adopted the "predominant benefit" test to determine whether an employee's meal break is compensable under the Fair Labor Standards Act (FLSA). In reaching its decision, the Third Circuit (which covers Pennsylvania, New Jersey, Delaware and the U.S. Virgin Islands) opted to follow the majority of federal appellate courts in applying the predominant benefit test.

### **Butler County Correctional Officers Sought Fully Compensated Meal Breaks**

Pursuant to a collective bargaining agreement (CBA) between Butler County and the union representing the County's correctional officers, employees covered by the CBA were entitled to a one-hour meal period per shift – 45 minutes of which were paid and 15 minutes of which were unpaid. Sarah Babcock, a Butler County correctional officer, filed suit on behalf of herself and all other County correctional officers, in the U.S. District Court for the Western

District of Pennsylvania claiming the County violated the FLSA by failing to pay them for the 15-minute unpaid portion of their meal break.

Specifically, Babcock claimed that during their meal period the County restricted their ability to run personal errands, sleep, breathe fresh air, smoke cigarettes or otherwise leave the prison without permission. Further, the County required correctional officers to remain in uniform, have their meal breaks within prison grounds, and if necessary, respond to emergency situations that arose during meal breaks. The County denied any liability and moved to dismiss the complaint contending that the correctional officers received the "predominant benefit" of the meal period notwithstanding the restrictions. The trial court agreed with the County and dismissed the suit and the plaintiffs appealed.

### **Third Circuit Rejects the 'Relieved From All Duties' Test**

In *Babcock*, to determine whether an employee's meal break is compensable work under the FLSA for which wages must be paid, the Third Circuit considered two tests: (1) the "relieved from all duties" test; and (2) the "predominant benefit" test. Under the relieved from all duties test, an employer must

compensate employees for their meal break unless the employees are *completely relieved from all work duties* during the duration of the meal period. The Third Circuit rejected this test because it had been eschewed by all other federal circuit courts that have specifically addressed the issue. Instead, the Third Circuit adopted the predominant benefit test, which is followed by the majority of federal circuit courts.

Under the predominant benefit test, a court must assess the totality of the circumstances to determine whether the employee is primarily engaged in work-related duties during meal periods. The test calls for a fact-intensive analysis. If the employee is primarily engaged in work-related duties during his/her meal period, then the meal break is compensable under the FLSA. On the other hand, the meal break is not compensable if employees merely perform activities that are incidental to their work duties, which do not interfere with eating a regularly scheduled meal.

Using the predominant benefit test, the Third Circuit upheld the trial court's dismissal of the Butler County correctional officers' complaint. In doing so, the *Babcock* Court concluded that the restrictions placed on employees during their meal break were not overly burdensome so as to deprive the correctional officers of the predominant benefit of their meal breaks. In particular, the Court found that the plaintiffs enjoyed the following privileges during their meal break:

- the plaintiffs could request authorization to leave the prison during their meal breaks;
- the plaintiffs could enjoy their meals away from their desks; and
- the County did not limit the plaintiffs' right to read non-departmental publications during their meal breaks.

The Third Circuit also held that the plaintiffs had adequate protection through their union and the CBA. Under the CBA, correctional officers already enjoyed a

partially compensated meal break regardless of whether they were called to respond to an emergency situation. The CBA also required the County to pay correctional officers "mandatory overtime" in instances where work duties interrupted employees' meal breaks. Thus, the *Babcock* Court concluded that the CBA already required the County to compensate the plaintiffs when they were actually called to respond to an emergency situation during their meal break.

The plaintiffs have moved for reconsideration either by the original three-judge panel or before an *en banc* panel of the Third Circuit. In their motion for reconsideration, the plaintiffs argue that the Third Circuit erred by looking to the language of the CBA in its analysis of the FLSA question, and that its ruling therefore conflicts with rulings from other circuits.

#### **The Implications of the *Babcock* Decision and the Predominant Benefit Test**

The *Babcock* opinion presents issues for employers who have an on-call component to their meal break policy or otherwise require employees to perform incidental work during meal breaks. Because the predominant benefit test is a fact-intensive exercise, reasonable minds can differ on the issue of who derives the predominant benefit from a meal break. Accordingly, employers should be mindful of what their meal break policy says, how the policy is implemented and whether other workplace policies interfere with employees' meal breaks.

Further, under *Babcock*, it is clear that employers must compensate employees for their meal period when employees perform significant work during the meal period. Thus, when employees are required to perform work that prevents the employees from eating or from using the meal period predominantly for non-work activities, the employee must be compensated under the FLSA.

Finally, as in all facets of wage and hour law, the prudent employer must also be familiar with the intricacies of state and local wage and hour regulations that may be more restrictive than the FLSA and may require that a meal period be paid even if the time would not necessarily be compensable under the FLSA.

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