

Electronic Alert

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**Oregon Court of Appeals:
Employers are Strictly Liable for Employees Who Do Not Take Full Meal Breaks**

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The obligations of an employer to provide meal and rest breaks for employees just became more onerous with the Oregon Court of Appeals' holding that employers are responsible for ensuring employees receive their full meal period, even if an employee chooses to resume work early. What this practically means for employers is that merely providing the opportunity to take a break is insufficient, the employer must also ensure that the entire meal period—usually 30 continuous minutes for a work period of six hours or more—be taken.

In *Maza v. Waterford Operations, Ltd. Liab. Co.*, 300 Or. App. 471 (2019), the Oregon Court of Appeals considered a class action of 54 individuals who claimed they did not receive a continuous 30-minute meal break and sought penalty wages for the alleged violation. The employer argued it provided non-exempt employees' rights to take meal breaks and did not require employees to work through their meal breaks. The employer also took reasonable steps to set policies that comply with Oregon meal break laws. Its handbook expressly provided, “[n]on-exempt hourly employees should never perform any work for the Company off-the-clock.” The employer also required employees to “immediately report” when they received less than their full meal period and make notations on their timesheets. The plaintiffs in *Maza* disregarded these policies and did not take their full meal breaks. Nonetheless, they sought penalty wages in this case, arguing that the Company failed to take sufficient steps to ensure their meal periods were taken.

In *Maza*, the Oregon Court of Appeals applied a broad interpretation to Oregon law and concluded that employers are strictly liable for ensuring employees actually take meal breaks. Based on this interpretation, the Court allowed the plaintiffs to proceed with their claim for penalty wages.

Maza is a groundbreaking decision overturning settled wisdom that employers only need to make a meal break *available* to employees. Now, employers must also police employees to ensure they *take* their full meal break. Drafting strong handbook policies is a start, but is not enough to mitigate the risk of costly and disruptive class action suits. Given the sweeping holding in *Maza*, it is imperative that employers take affirmative steps to comply with the law. Employers should consider the following:

1. Train managers and supervisors to ensure employees understand that taking the full 30-minute meal break is not optional or voluntary.
2. Review your employee handbook to ensure it says that employees should first obtain permission before returning to work early and, in the event they return to work early, employees must mark down the time on their timesheets.

3. Proactively enforce these rules, document incidents, and counsel or discipline employees for failing to take their full meal period or report off-the-clock work.
4. Consider explaining to employees who telecommute that they too must comply with meal break policies. Direct supervisors to monitor telecommuters for compliance.
5. Consider implementing a time-tracking system that prevents employees clocking in before their 30-minute break is complete.

For questions about wage and hour laws and handbook policies, contact Sarah Hale at 503-276-2111 or shale@barran.com, or Josh Goldberg at 503-276-2107 or jgoldberg@barran.com. For further discussion of this and other emerging wage and hour issues, sign up for Sarah's upcoming Food for Thought Breakfast Seminar, entitled, "Wage & Hour Compliance: Overtime Eligibility, Employee Classification, & Best Pay Practices," on Tuesday, January 14, 2019. To RSVP, please email Jessica at jtimm@barran.com.