

Third Circuit Adopts Predominant Benefit Test to Determine Compensability of Meal Breaks

PUBLISHED ON

November 25, 2015

The U.S. Third Circuit Court of Appeals, which has jurisdiction over Pennsylvania, recently evaluated the appropriate test to determine when employees must be paid for meal breaks. As described below, the Third Circuit in the case of *Babcock v. Butler County*, ruled that the compensability of meal breaks should be determined under the "predominant benefit test."

In *Babcock*, a class action case, the plaintiff prison guards argued that because their employer placed a number of restrictions on their one hour meal break, including a requirement that they obtain permission to leave the premises and respond to on-call emergencies, the entire meal break was compensable as work time. Their employer asserted that the employees received the predominant benefit of the meal period and, therefore, the time was not compensable work time.

In evaluating the compensable nature of the meal break, the Third Circuit joined other federal circuit courts in adopting the "predominant benefit test." Under this test, the court evaluates whether the employees receive the predominant benefit of the meal break, rather than the employer. One factor evaluated under this standard looks at whether the employee was primarily engaged in work-related duties during meal periods.

In applying the predominant benefit test to the *Babcock* case, the Third Circuit sided with the employer and found that the class members were not primarily engaged in work duties during the meal period. The Third Circuit also noted that the collective bargaining agreement required that the plaintiffs be paid overtime if their lunch break was interrupted by work.

In light of this decision, employers now have guidance on evaluating the compensability of meal breaks under the Fair Labor Standards Act (FLSA). The *Babcock* decision permits some restrictions on meal breaks, e.g. remaining on the premises and being available for emergencies, so long as the employee is not primarily engaged in work-related duties during the break. Employers should keep in mind that break time of less than 20 minutes must be compensated under the FLSA, even if employees are not performing productive work.

Barley Snyder's [Employment Law](#) Group performs training and conducts audits regarding wage and hour practices. Please contact a member of our group should you have any questions about this decision or require assistance with wage and hour compliance.

:



Jennifer Craighead Carey

Managing Partner

Tel: (717) 399-1523

Email: jcraighead@barley.com