

REGULAR AND OVERTIME BREAK PERIODS

By Karen Sutherland

You may already be aware that Washington law requires a paid ten minute rest period for each four hours of working time, but did you know that this requirement applies to overtime hours as well? The Washington Court of Appeals in *Wingert v. Yellow Freight Systems, Inc.*, 104 Wn. App. 583 (2001) rendered a decision stating that WAC 296-126-092(4), which prohibits employers from working its employees more than three hours without a paid ten minute rest period, applies to both regular work hours and overtime hours.

Employers and employees should be familiar with all of the provisions of WAC 296-126-092, not just WAC 296-126-092(4), because of the regulation's broad application and enforceability. In a nutshell, WAC 296-126-092 states that:

- (1) employers must allow a meal period of at least thirty-minutes commencing no less than two hours nor more than five hours from the beginning of the employee's shift;
- (2) no employee shall be permitted to work more than five hours without a meal period;
- (3) employees working three or more hours longer than a normal workday must be allowed at least one thirty-minute meal period prior to or during the overtime period;
- (4) employees must be allowed a rest period of no less than 10 minutes, on the employer's time, for each four hours worked; and
- (5) where the nature of the work allows employees to take intermittent rest periods equivalent to ten minutes for each four hours worked, scheduled rest periods are not required.

Although these provisions are fairly straightforward, there are a few key points to bear in mind. For example, be aware that subpart (5) exempts certain employees from the ten-minute rest period requirement of subpart (4). The litmus test to determine whether employers need to provide a scheduled ten-minute break every four hours is to ask the following question: Is the employee free to take intermittent rest periods throughout the workday at the employee's discretion which are equal to or greater than ten minutes for each four hours worked? If the answer is yes, then WAC 296-126-092(4) does not apply to that employee. If the answer is no, however, then WAC 296-126-092(4) does apply – for both regular and overtime hours.

Failure to comply with WAC 296-126-092(4) can expose an employer to an action for damages by employees to recover for lost wages. Ten minutes might not seem like much time, but when compounded over the course of a year and multiplied by the total number of affected employees, an employer could face significant liability for non-compliance.

Employers and employees should also be aware of provisions regulating meal breaks. WAC 296-126-092(2) mandates that no employee shall be required to work more than five consecutive hours without a meal break. This means that employers cannot allow their employees to skip meal breaks voluntarily in exchange for an earlier release from work. If employers give their employees more than the mandatory thirty-minute meal period, for example an hour for lunch,

the employer may allow the employee to take a half-hour lunch in exchange for leaving work a half-hour early. However, again, the employer cannot allow the employee to take less than a half-hour meal break for every five consecutive hours worked.

This brief article is a broad summary only. It lacks specificity about the law and about the effects of different fact patterns, and thus shall not be applied without consulting an attorney. It also focuses on Washington State law and federal law, and the laws of other jurisdictions may vary materially. The information set forth in this article is a broad and general overview of complex topics, and is not legal advice. It also does not take into account any changes to the law or in interpretations of the law that may have occurred since it was written. For more information, contact Karen Sutherland at ksutherland@omwlaw.com