



Employment Law Note

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Like a Broken Record, Only More Expensive: *Androckitis* & Double Damages for Missed Meal Breaks



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On September 30, 2024, Division One of the Washington State Court of Appeals issued a decision in *Androckitis v. Virginia Mason Medical Center* that clarified what is owed to an employee who does not receive a full, uninterrupted 30-minute meal break. The Court also ruled that penalties in the form of double damages may be levied on employers who willfully fail to provide full uninterrupted meal breaks. *Androckitis* serves as a reminder to employers that monetary consequences can be severe if employers fail to follow Washington's meal-break regulation.

Washington's Meal-Break Regulation – WAC 296-126-092

WAC 296-126-092 provides nonagricultural nonexempt employees with the right to an unpaid 30-minute meal period. The 30-minute meal period must commence "no less than two hours nor more than five hours from the beginning of the shift." WAC 296-126-092(1). Further, "[n]o employee shall be required to work more than five consecutive hours without a meal period." WAC 296-126-092(2). Additionally, where the employee is "working three or more hours longer than a normal work day[,] the employee "shall be allowed at least one 30-minute meal period prior to or during the overtime period." WAC 296-126-092(3).

Slightly different rules apply for agricultural workers (see WAC 296-131-020) and additional requirements apply to health care facility employees (see RCW 49.12.480). Public employees and employees in the construction industry covered by a Collective

Bargaining Agreement may have different meal break requirements altogether.

Where an employee is required to remain on duty—that is, when an employee is not completely relieved from work duties, is acting in the interest of the employer, or is unable to spend their meal break however they please—the meal break must be paid. Regardless of this paid meal break, the employee must still receive 30 minutes "total of mealtime." Further, time spent performing work tasks does not count towards the 30-minute total. For on-duty and/or interrupted meal breaks, if the employer pays the employee for the entire meal period that was missed or interrupted *and* ensures that the employee still receives 30 minutes total of mealtime, there is no violation and payment of an extra 30-minute meal break is not required.

Employees may waive their right to meal breaks; however, their waiver must be knowing and voluntary. A waiver does not need to be in writing, but it is highly advisable to document any such waiver in writing. Notably, rest breaks cannot be waived.

Androckitis v. Virginia Mason Medical Center

In *Androckitis*, the lead plaintiff, Rheannon Androckitis, was a nonexempt employee working for Virginia Mason Medical Center ("Virginia Mason") who brought a class action on behalf of current and former nonexempt employees at Virginia Mason. She alleged that she and others were not provided with meal and rest breaks. Virginia Mason used an auto-deduct timekeeping software policy whereby the 30-minute meal period was deducted from each employee's recorded time. If an employee missed a

meal break, they were required to remove the auto-deduction; however, Virginia Mason did not provide the employee with an option to take a later 30-minute meal period or compensation for the loss of their meal period. Thus, Virginia Mason was only paying the employees for their hours worked.

After hearing the parties' summary judgment motions, the trial court ruled Virginia Mason owed the class members an additional 30 minutes' compensation for missed meal breaks, in addition to paying them for all time worked. The trial court also ruled the refusal to pay the class members for missed meal and rest breaks was willful, because Virginia Mason unreasonably delayed retroactive payment compensation after it learned of the deficiencies in the timekeeping software. Virginia Mason appealed the trial court's ruling.

Regarding meal breaks, the Court of Appeals ruled that: 1) the employees who reported missed meal breaks must be compensated for those missed breaks; 2) all employees who reported missed meal periods were entitled to another 30 minutes of pay as a penalty; *and* 3) the employer's failure to pay for the missed meal breaks as well as its failure to pay a penalty for the missed meal breaks was a willful refusal to pay wages, warranting payment of double damages. In sum, under *Androckitis*, an employee could be entitled to 120 minutes of compensation—in the form of back pay and damages—for a single 30-

minute meal period violation, including 30 minutes of unpaid time worked during the meal period and 30 minutes of penalty pay, doubled for willfulness.

Takeaway for Employers

The ramifications of *Androckitis* are significant for employers and raise the stakes—and cost—of wage and hour claims. The *Androckitis* decision clarifies that an employer cannot simply pay an employee for a missed or uninterrupted meal break without also providing the employee the full 30 minutes of total mealtime. Employers who pay for missed or interrupted meal breaks are essentially paying employees for hours worked. Thus, the employer must ensure that the employee still receives their full 30 minutes of total mealtime within that shift. A failure to pay for missed meal breaks, and a failure to provide the full 30 minutes of total mealtime, can result in significantly increased penalty payments. Employers should ensure that policies and practices are in place to ensure that nonexempt employees are, in fact, taking breaks and that systems are in place for reporting when breaks are not taken. In such cases, employers must be diligent and proactive in compensating employees appropriately.

Employers with questions regarding meal break waivers or the implications of *Androckitis* are encouraged to contact Sebris Busto James.

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