



## Employment Law Note

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### The Meal Period Morass



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On August 23, 2018, the Washington Supreme Court reaffirmed the maxim that “no good deed goes unpunished.” In *Hill v. Garda CL Northwest, Inc.*, a class of armored car drivers and messengers filed a class action against the company claiming that they did not receive their mandatory meal and rest breaks, along with additional allegations of time card alteration and working off the clock. The drivers argued that they were shorted their contracted-for meal period because they were required to stay “constantly vigilant” in case of robbery or other forms of violence, while taking lunch breaks in their vehicles. Significantly, the plaintiffs were paid for the meal periods. Pursuant to the plaintiffs’ collective bargaining agreement, they could opt out of the paid on-duty meal period and request an unpaid off-duty meal period free from any work responsibilities, including the duty to “stay vigilant.” Washington law requires that employees receive a paid 10-minute break for every 4 hours worked and an unpaid half-hour meal break, though employees can waive their right to a meal break.

The company made four arguments: (1) the drivers were paid for the meal period; (2) they had the option to waive the vigilance requirement and take an unpaid meal period completely relieved of duties; (3) since the dispute involved an interpretation of the collective bargaining agreement, plaintiffs’ recourse was mandatory arbitration; and (4) even if a violation of state law, the company’s actions were based on a good faith dispute and therefore not willful. The trial court disagreed and entered an \$8.4 million judgment

against the employer (including \$1.6 million in double damages for a willful violation, \$2.3 million in prejudgment interest, and \$1.2 million in attorney’s fees and costs) without a trial. The trial court found that the company had intentionally underpaid its employees even though the collective bargaining agreement reflected employee waiver of the right to unpaid meal breaks under state law. The appellate court affirmed the trial court judgment but rescinded the award of double damages. The plaintiffs appealed to the Washington Supreme Court.

The Washington Supreme Court not only affirmed the ruling against Garda but reinstated the award of double damages for a “willful violation.” In doing so, it held as follows. First, the mandatory arbitration provision in the collective bargaining agreement did not apply because plaintiffs’ class action was not based on any right under the union agreement, but, instead, a right under a state statute which could not be waived by the Union. Second, the Court engaged in some legal hair splitting by defining the unpaid meal period waiver in the Union agreement as limited to unpaid “off-duty” meal breaks (i.e., those involving no duties at all, including the duty to stay vigilant) versus the contractual waiver needed in this case as to “on-duty” meal breaks (i.e., those involving relief from all work duties but requiring the driver to remain in the armored car). Under the Court’s analysis, the Union agreement did not waive the drivers’ right to on-duty meal periods.

Third, the Court found that the company’s actions were “willful” because the employees clearly maintained their right to a paid “on-duty” meal

period in the agreement. The agreement contained a clause stating in part, "The Employees hereto agree to an on-duty meal period." Thus, the employer could not avoid double damages even though it paid the employees for that meal period.

Lastly, the Court rejected the company's argument that it could not be held liable for both interest and double damages because this would result in an impermissible double recovery. The Court noted that the remedies of prejudgment interest and double damages serve two different purposes – double damages are meant to deter the employer from underpaying its workers and prejudgment interest is meant to repay the employee for the "use value" of the money he or she did not receive because of the employer's failure to pay. Thus, the Court held that employees who establish a wage violation are entitled to both double damages and interest on their unpaid wages.

## Key Takeaway for Employers

Following this decision, employers should be cautious when allowing employees to "work through lunch." If an employee chooses to waive an unpaid meal period, the best practice is to have the waiver documented and signed by the employee. To avoid additional paperwork and case-by-case lunch agreements, employers can require all employees to take a 30-minute unpaid meal break.

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