

DOL Opinion Letter: Excessive 15-Minute Breaks Are Not Compensable

Labor & Employment Law Update

on April 25, 2018

On April 12, 2018, the Department of Labor (DOL) issued an opinion letter addressing the intersection between the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA) when an employee needs multiple rest breaks throughout the day due to an FMLA covered serious health condition.

Background

The FLSA generally requires employers to compensate employees for all time spent working. Although the Act does not require employers to provide rest or meal breaks, it does regulate whether such breaks—if provided by the employer—must be paid as compensable working time. Specifically, breaks of up to 20 minutes are generally considered primarily for the benefit of the employer and must be paid.

The FMLA, on the other hand, provides eligible employees with up to 12 weeks of unpaid job-protected leave for employees with a serious health condition. FMLA leave may be taken incrementally and, in certain circumstances, in periods of less than one hour.

Employers are not required to pay for excessive breaks

What if an employee needs to take multiple breaks during the work day due to his/her serious health condition? According to Opinion Letter FLSA 2018-19, such breaks are not compensable because they are not “primarily for the benefit of the employer.” Importantly, however, the DOL noted that an employer must still compensate the employee for breaks she would have received regardless of her serious health condition. To illustrate this point, the DOL provided the following example:

[I]f an employer generally allows all of its employees to take two paid 15-minute rest breaks during an 8-hour shift, an employee needing 15-minute rest breaks every hour due to a serious health condition should likewise receive compensation for two 15-minute rest breaks during his or her 8-hour shift.

Employer takeaway

Employers can rest easy knowing that they do not have to pay employees for unlimited rest breaks simply because they are necessitated by an FMLA-approved serious health condition. Employers should carefully administer and track any such breaks to ensure compliance with both the FMLA and FLSA—along with any applicable state or local laws (e.g., local paid sick leave laws and required paid rest breaks).

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