

## Publications

### Labor and Employment Alert: Massachusetts Trial Court Holds That On-Call Meal Periods Must Be Paid

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In a case of first impression, the Massachusetts Superior Court (the state's trial court) recently decided when an employee's unpaid meal break should instead be counted as paid working time. In *Devito v. Longwood Security Services*, the trial court held that a meal break is compensable unless the employee was relieved of all duties during the meal break.

The case involves a class of private security officers who provide security at sites throughout Boston, including at housing developments, hospitals, and colleges. Longwood maintains a policy permitting officers to take a 30-minute, unpaid meal break. During the meal break, officers must remain in uniform and are not allowed to leave their assigned sector without permission. Longwood's written policy states that "you must keep your radio on while on break and respond when called to, even if during your break."

Massachusetts wage-hour regulations define "working time" as all time during which an employee is required to be on the employer's premises or to be on duty, but this time does not include meal times during which an employee is relieved of all work-related duties. The Court found that this definition was unambiguous and clearly means that "the thirty minute meal time is compensable unless the employee is relieved of all work related duties." After acknowledging that no Massachusetts court has decided this issue, the Court adopted the "relief from duties" test. The Court left it to the jury to determine whether the officers were relieved of all work-related duties during their meal breaks.

In so holding, the court rejected the more employer-friendly "predominant benefit" test under the federal Fair Labor Standards Act. Under this test, meal breaks are unpaid if the break time was spent "predominantly" for the benefit of the employees, even if some work was performed during the break or if break-time activities were restricted.

The “relieved of all duties” test is stricter than the predominant benefit test. If the court’s ruling stands, an entire meal period may constitute paid time if an employee performs a few minutes of work during the break or if the employer restricts an employee’s break time. Massachusetts law imposes treble damages for violations of its wage-hour laws, dramatically increasing employers’ potential liability. Given this, employers in Massachusetts should review their policies and practices regarding meal breaks to determine if any changes are needed in light of the court’s decision. Contact your Vorys lawyer if you have questions about the implications of the Court’s decision or about Massachusetts wage-hour laws in general.