

# Management Alert



## Massachusetts Superior Court Adopts Stringent Standard for Unpaid Meal Breaks Under State Wage Law

By Barry J. Miller and Anne S. Bider

**Seyfarth Synopsis:** The Massachusetts Superior Court recently issued an opinion holding that, under Massachusetts wage law, employers in the Commonwealth must pay employees for meal breaks, unless the employees are completely free of all work-related duties. This ruling considerably restricts employers' ability to treat meal breaks as non-compensable time under Massachusetts law.

On December 23, 2016, a Justice in the Business Litigation Session of the Massachusetts Superior Court issued an opinion in the case *DeVito v. Longwood Security Services, Inc.* that examines the appropriate test for determining whether meal breaks must be paid under Massachusetts wage and hour law.

Plaintiffs are private security officers at housing developments, medical facilities, and colleges who sued under the Massachusetts Wage Act and Massachusetts Overtime Law seeking compensation for their 30-minute meal breaks because, during this time, they must remain at their assigned worksite, remain in uniform, and respond to any radio calls they might receive.

The employer asserted that the meal breaks should not be paid because the break time was spent predominantly for the benefit of the employees (the "predominant benefit" test), which courts have generally applied in deciding the compensability of breaks under the federal Fair Labor Standards Act. The employees, on the other hand, argued that the meal breaks should be paid because the employees were not completely relieved of all work-related duties while on break (the "relieved-of-all-duties" test), which they claimed is prescribed by state-level regulations.

### The Court Adopts the Relieved-of-All-Duties Test

While the court did not decide the ultimate question of whether the meal breaks at issue must be paid (noting that a jury would make this fact-intensive determination), the court announced its decision to adopt the more stringent "relieved-of-all-duties" test.

Under this test, Massachusetts employers must pay employees for meal breaks *unless employees are completely relieved of all work-related duties* during the meal period. In endorsing this test, the court recognized that it was departing from the more commonly applied and more employer-friendly "predominant benefit" test.

## Impact on Employers

The court's adoption of the "relieved-of-all-duties" test means that a mere minute or two of work for the employer's benefit—or a few restrictions on an employee's break time—can turn an entire meal break into paid time under Massachusetts law.

Whereas the more widely applied "predominant benefit" test allows meal breaks to be unpaid as long as the employee—and not the employer—receives the primary benefit of the meal period, this is no longer the correct standard to apply in the Commonwealth.

The stringent nature of the "relieved-of-all-duties" test—and the mandatory trebling of damages for all violations of the Massachusetts wage laws—strikes a blow to the Commonwealth's employers and creates the potential for significant liability. If this ruling stands, a new wave of class action lawsuits against employers asserting claims relating to unpaid meal breaks appears likely.

## Steps That Employers Should Take Now

Massachusetts employers should review their policies and practices to ensure that meal breaks are unpaid only if employees are completely free of all work-related duties during the meal period.

Employers should be especially mindful of any restrictions placed on employees during meal breaks, including restrictions that limit employees' ability to leave the worksite or that require employees to remain on-call. Such restrictions may render meal periods compensable working time under the test adopted in *DeVito*.

If you would like further information, please contact your Seyfarth attorney, Barry J. Miller at [bmiller@seyfarth.com](mailto:bmiller@seyfarth.com), or [Anne S. Bider](#) at [abider@seyfarth.com](mailto:abider@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)

Attorney Advertising. This Management Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

**Seyfarth Shaw LLP Management Alert | January 13, 2017**

©2017 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.