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Client Update

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Portland, ME (207) 773.4775 / Boston, MA (617)973.1550



The Dangers of Looking the Other Way: Employer Held Liable to Pay Former Employee for Interrupting Lunch Breaks

Charter Communications (Charter) employed Karen Lopez-Easterling (Lopez) as a Front Counter Lead performing customer service duties. After being fired in 2014, Lopez sued to recover wages for work performed during her lunch breaks. Charter Communications denied knowing Lopez worked during lunch, but after a review of the case, the court found evidence to the contrary requiring that this matter proceed to trial.

All Charter employees used a timekeeping system called “eTime” to record their work hours. Charter required its employees to review and “approve” their timecard in the eTime system. The employee handbook provided: “Hourly employees must maintain an accurate record of all hours worked each day and all time off taken. Hourly employees were not, under any circumstances, allowed to “work off the clock” (e.g., during meal periods or outside of the regular work schedule).” Lopez signed the Employee Acknowledgement Form, which stated that she read and understood the conditions that it outlined.

The Human Resource Manager testified that when a non-exempt employee performed work “during a meal break or before or after the regular work schedule and failed to obtain advance authorization from the supervisor, the employee must still report all of the hours work and will be compensated.” The Manager also said that the eTime training manual did not expressly state how to deal with work during a lunch break and the timekeeping policy did not address work during lunch other than to say not to do so. For its part, Charter expected that if an employee returned to work, then she is to clock back in to eTime or report it to her supervisor.

Lopez stated that when she worked past her hours and reported it, even in cases when she did not have advance permission, Charter paid her. However, this was not the case when she was interrupted during her lunch hours. Lopez claimed that two to three times per week she was pulled from her lunch to deal with problematic client issues at the service desk. Other employees were interviewed and confirmed that they went to get Lopez when they needed extra help even if she was on lunch. Lopez claimed that each interaction could take between 5

and 30 minutes of her allotted one hour.

Lopez admitted that she did not send an email or put the information into the eTime system for this lunch period work, but said that she told her supervisor several times of having to work during lunches. Lopez also admitted that although she checked for the extra time worked and did not see it reflected in her final hours adjusted by her supervisor, she did not alert HR to the discrepancies and did not ask to be paid for the time she had worked during her lunches. Lopez did not pursue the matter until after losing her job.

In the opinion of the court, although Lopez's supervisor claimed that she had not seen her working during lunches, there were too many other employees that knew of Lopez's work. The court further stated that if Lopez had shared verbally with her supervisor that she had worked extra time, it was the supervisor's responsibility to inquire further to correct the time for payroll. The court found enough in the record to order this matter to trial.

This case serves as a good reminder that work time is for work and break time is not. Where an employer knows or has reason to know an employee is working off the clock, the employer is responsible for paying the employee. Federal and state wage and hour statutes placed the responsibility on the employer to stop employees from working during breaks and the increasingly wired workplace complications to the issue of time suffered or permitted to work are on the increase due to smart phones, e-mail and texting. Policies and their enforcement should be clear. Depending on the situation, exposure can reach back for up to six years, damages can be tripled, and attorneys' fees awarded amongst the most common remedies.