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## **Fifth Circuit: Companies Might Have to Pay Workers for Lunch Breaks**

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Companies might have to pay hourly employees for time they spend consuming lunch, if the employers impose traveling obligations on those workers during that time, according to the U.S. Fifth Circuit Court of Appeals.

In a Sept. 15 ruling hailed as extremely consequential by plaintiffs counsel, the Fifth Circuit ruled that a jury could review whether an employer who schedules a 30-minute break for a worker's lunch but imposes traveling obligations as part of that time, should have to pay the employee for that break time. The meals, because of the traveling obligations, could be defined as "rest periods" under the Fair Labor Standards Act (FLSA), and therefore be eligible for back-pay claims, the Fifth Circuit ruled.

The FLSA requires that nonexempt employees be paid at least the national minimum wage of \$7.25 per hour for all hours worked, plus time-and-a-half their regular rates for hours worked beyond 40 hours per week.

In the litigation, employees sued a U.S. Navy defense contractor, Securiguard Inc. According to the Fifth Circuit opinion, Securiguard provides guards for each gate of a naval yard, and hired the plaintiffs to fill those positions. During the time period that was the subject of the litigation, the guards usually worked eight-hour shifts with two scheduled 30-minute meal breaks. Each meal break began when a relief officer arrived at the gate in a company car. The guard then had 30 minutes to spend away from the guard post. The guards had requested to eat at the gate or in a parked car. But Securiguard had nixed that idea, "apparently fearful that the Navy would see the guards eating and believe they were shirking their security duties," according to the opinion in *Naylor v. Securiguard*, written by Judge Gregg Costa, who was joined by Judges Thomas Reavley and Edward Prado.

A district court granted Securiguard's motion for summary judgment, holding that the FLSA requires compensation for a meal break only when an employer imposes "substantial duties or restrictions" during the designated time.

But the Fifth Circuit panel reversed and remanded, concluding: "Because a jury could find that the remaining meal breaks did not allow enough time for the employees to use the break for their own purposes to qualify as noncompensable."

Michael Goggans of Meridian, Mississippi's The Goggans Law Firm, who represents the plaintiffs, said: "The clients are very pleased. They were disheartened by the district [court] ruling, and now they can get some relief."

Stewart Manela of Washington, D.C.'s Arent Fox, who represents Securiguard, did not return a call for this story.

Galvin Kennedy, partner in Houston's Kennedy/Hodges, who represents workers in more than a dozen FLSA claims, welcomed the ruling and said it will boost his clients' odds in two pending cases against two hospital employers in which he represents nurses.

"These facts mirror ours," Kennedy said about the Naylor litigation.

"The nurses are told that they should take 30-minute breaks, but they end up having to work through their meal period. Health care comes before eating a sandwich and the hospitals encourage the nurses to respond to the needs immediately of patients and families. But the hospitals automatically deduct those 30 minutes from each day of a pay period," he said. Given the Naylor ruling, Kennedy is optimistic that his clients may prevail on what he calculates may be more than \$5 million in claims. In one of the case, he is seeking lunch-break back pay for more than 2,300 hospital employees.

In the opinion, Costa wrote: "We have never addressed this question about the legal effect of employer-mandated travel time that significantly eats into an otherwise noncompensable thirty-minute meal period. The closest case addressed the compensability of twenty-minute meal breaks given to police officers after they arrived at a location where they could eat."

But in that case, the employees "did not log off until they had arrived at their chosen eating place, and were therefore compensated for traveling to their destination," Costa wrote.

In contrast, he wrote: "Securiguard treated the entire period of the break—both the travel time and time during which the guards could eat—as noncompensable."

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