



Breaks and Meals

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Table of Contents

Breaks and Meals	3
------------------------	---

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Break periods, such as lunch or dinner meals or rest periods, may or may not be compensable depending on whether the employee is relieved from duty and the amount of time allocated for the activity. The FLSA does not require that employees be given rest periods, but if rest periods are provided, they must be counted as hours worked if they last 20 minutes or less (*Mitchell v. Grienz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10th Cir. 1956)). Coffee and snack breaks are compensable rest periods and cannot be excluded from hours worked as meal periods. Whether rest periods that last longer than 20 minutes are compensable depends upon an employee's freedom during the breaks. 29 C.F.R. 785.18

"A bona fide meal time, when the employee is completely relieved from duty, is not work time. Short periods, such as coffee breaks or snacks, are not considered meal time. Of course, if an employee works during the meal, the time is compensable. Whether or not an employee's meal period can be excluded from compensable working time depends on the employee 'freedom meal test'." 29 C.F.R. § 785.19(a).

Unless all of the following three conditions are met, meal periods must be counted as hours worked:

1. The meal period generally must be at least 30 minutes, although a shorter period may qualify under special conditions. In *Blain v. General Electric Company*, 371 F. Supp. 857 (W.D. KY, 1971), the court approved an 18-minute meal period, because the employees agreed to it in return for leaving earlier in the day.
2. The employee must be completely relieved of all duties. If the employee must sit at a desk and incidentally answer the telephone, for example, this would be compensable time.
3. The employee must be free to leave his/her duty station. There are no requirements, however, that the employee be allowed to leave the premises or work site. 29 C.F.R. § 785.19(b).

"Meal time spent out of town on business trips is not generally compensable time." 29 C.F.R. § 785.39. If, however, an employee works during his/her meal, such time is compensable. "Any work done voluntarily during meal periods must be counted as compensable working time if the employer knows or has reason to believe the work is being performed. If the employer does not know of the work, and the employee's work during meal time is essentially de minimis, no compensation is required." *Baker v. United States*, 218 Cl. Ct. 602 (1978). "Public agencies may exclude meal time from hours worked on tours of duty of 24 hours or less, provided that the 207(k) employee is completely relieved of duty during the meal period." 29 C.F.R. § 553.223(b). "The meal period of safety personnel who are on call more than 24 consecutive hours can be excluded from working time under certain criteria." 29 C.F.R. § 553.223(d).

Firefighters required to remain at their work station during meal time and obligated to respond to incoming calls are not completely relieved from duty, therefore, their mealtime is compensable. *Rotondo v. Georgetown, S.C.*, 869 F. Supp. 369 (D.S.C. 1994). However, in *Albee v. Village of Bartlett, Ill.*, 861 F. Supp. 680 (N.D. Ill. 1994), the courts determined that occasional interruptions in a police officer's meal break did not entitle the officer to compensation. The bottom line seems to be whether the officer's time and attention are occupied primarily by private pursuit (procurement and consumption of food) or whether the officer's time and attention are taken up primarily by official responsibilities that prevent the officer from comfortably and adequately enjoying the meal.

"If a public agency elects to pay overtime compensation to firefighters and law enforcement personnel in accordance with section 207(k) of the act, the public agency may exclude meal time from hours worked if all the tests in §785.19 above are met." 29 C.F.R. § 553.223(a). If a public agency elects to use the section 7(k) exemption, "the public agency may exclude meal time from hours worked on tours of 24 hours or less, provided that the employee is completely relieved from duty during the meal period." 29 C.F.R. § 553.223(b).

With respect to firefighters employed under the section who are confined to a duty station, "meal time cannot be excluded from the compensable hours of work where the firefighter is on a tour of duty of less than or exactly 24 hours." 29 C.F.R. § 553.223(c). On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance

activities (e.g., stakeouts) for 24 hours or less, they are not considered to be completely relieved from duty, and any such meal period would be compensable. In the case of police officers and firefighters who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work.

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