

## **There Really Is Such a Thing as a Free Lunch (for Employers), Says Third Circuit Court of Appeals**

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On November 24, 2015, the U.S. Court of Appeals for the Third Circuit (which hears appeals from federal district courts in Delaware, New Jersey, and Pennsylvania) issued a precedential [opinion](#) addressing when and whether an employer must pay an employee for meal periods.

The case was filed by a group of corrections officers at a prison in Pennsylvania. During their shift, these employees were entitled to take a one-hour meal period, of which 45 minutes were paid and 15 minutes were unpaid. During this meal period, the corrections officers could not leave the prison without permission, were required to remain in uniform and in close proximity to emergency response equipment, and remained on call to respond to emergencies. The corrections officers argued that because of these restrictions, they weren't fully relieved of their duties during the meal period – they could not run errands, sleep, or go outside – and thus that they should be paid for the full one-hour meal period.

The trial court dismissed the corrections officers' complaint. The Third Circuit Court of Appeals, which previously had not announced a test for determining the compensability of meal periods, affirmed and adopted the opinion expressed by the majority of federal appellate courts that have addressed this issue, concluding that the 15-minute unpaid portion of the one-hour meal period was not compensable time because the corrections officers received the "predominant benefit" of the entire meal period. Under this "predominant benefit" test – which is used in the Second, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits – a court must assess the totality of the circumstances and determine whether the employee is primarily engaged in work-related duties during meal period, and, thus, whether the predominant benefit of the meal period inures to the employer. If so, the time is compensable. By contrast, if the meal period primarily inures to the benefit of the employee, the meal period may be completely unpaid.

The Third Circuit rejected an alternate test that has been suggested by the Ninth Circuit Court of Appeals, which considers whether the employee has been relieved of all duties during the mealtime. This "completely relieved" test – which is a much stricter, employee-friendly test than the "predominant benefit" test – is a literal application of the Department of Labor's regulations, but it has not gained traction outside the Ninth Circuit. Nonetheless, because of the Ninth Circuit's minority position on this subject, there is a split of opinion among the federal appellate courts

on the proper method for determining whether a meal period is compensable, which may prompt the U.S. Supreme Court to conclusively resolve the dispute.

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National Law Review, Volume V, Number 329

Source URL: <https://natlawreview.com/article/there-really-such-thing-free-lunch-employers-says-third-circuit-court-appeals>