



Attorney Advertising

**PORZIO**  
BROMBERG & NEWMAN P.C.



**Employment  
Law Monthly**

December 2015

## NO SUCH THING AS A FREE LUNCH

*By Deborah H. Share*

The Third Circuit recently established the test for determining whether employees' mealtime is compensable or not. *Babcock v. Butler Cty.*, 806 F.3d 153 (3d Cir. 2015). The Court applied the predominant benefit test to determine that a class of prison corrections officers were not due overtime pay for their meal period, despite certain restrictions placed on them during that period.

### Background

Sandra Babcock, a corrections officer at a county prison in Pennsylvania, brought a class action suit against her employer Butler County ("Butler"). Babcock and other class members' (collectively "Plaintiffs") claims were brought under the Fair Labor Standards Act ("FLSA"). Plaintiffs asserted that Butler did not compensate them for time spent during a meal break that they believed was compensable, and that therefore they were owed overtime pay under the FLSA.

Specifically, Butler corrections officers receive an hour for mealtime, 45 minutes of which is compensated and 15 minutes of which is not compensated. Although a collective bargaining agreement ("CBA") between the officers and Butler mandates the one-hour meal period, the mealtime hour has certain rules attached to it. For example, officers may not leave the prison during the period without permission. They are to remain in uniform. Additionally, they must be on call and ready to respond in the event of an emergency.

### EDITOR-IN-CHIEF

Vito A. Gagliardi, Jr.  
973.889.4151  
[vagagliardi@pbnlaw.com](mailto:vagagliardi@pbnlaw.com)

### EMPLOYMENT LAW ATTORNEYS

[Phillip C. Bauknight](#)  
[Janelle Edwards-Stewart](#)  
[Marie-Laurence Fabian](#)  
[Vito A. Gagliardi, Jr.](#)  
[Thomas O. Johnston](#)  
[Emre M. Polat](#)  
[Eliyahu S. Scheiman](#)  
[Deborah H. Share](#)  
[Kerri A. Wright](#)

[James H. Coleman, Jr.](#)  
Retired Justice, New Jersey  
Supreme Court

[Maurice J. Gallipoli](#)  
Retired Judge, Superior  
Court of New Jersey

[Alvin Weiss](#)  
Retired Judge, Superior  
Court of New Jersey

### STAY CONNECTED



[More on Us](#)

Butler moved for dismissal, and the District Court dismissed the case, finding that Plaintiffs received the predominant benefit of the meal period, and it was therefore not compensable; thus no overtime was owed.



### **Third Circuit Decision**

Initially, the Third Circuit took the opportunity to adopt the predominant benefit test for compensability, as the Court had never endorsed a test previously. The Third Circuit chose between a test that looks at whether an employee is relieved from all duties during mealtime versus the predominant benefit test, which looks more precisely at who retains the primary benefit of the mealtime period. In adopting the predominant benefit test, the Third Circuit pointed out that this test is used by the majority of circuits. Additionally, in this matter, the proper test was not contested by either party, but rather Plaintiffs argued that the meal period was compensable under either test.

More specifically, the predominant benefit test looks at whether the employee is "primarily engaged in work-related duties during meal periods." The key factor is the extent to which the employee's time is "spent predominantly for the employer's benefit or for the employee's." This is a fact-intensive analysis, with the outcome based on the totality of the circumstances.

Here, in examining the circumstances surrounding Plaintiffs' mealtime period, the Third Circuit found the following factors most telling. Although they must remain in the prison, Plaintiffs may request permission to leave the prison during mealtime. Plaintiffs are not forced to remain at their desks for mealtime either. Additionally, the Third Circuit found that the CBA provided support for its decision. While the CBA does not address this specific issue of compensability, the CBA grants mandatory overtime pay if the mealtime is interrupted by work activities. Thus, even if an officer is forced to engage in work activities during mealtime, he or she would be compensated appropriately for that time regardless. The CBA is not a dispositive factor, but rather one factor in the overall fact-based analysis that leans in favor of finding non-compensability in this case.

The Third Circuit determined that Plaintiffs were not primarily engaged in work duties during mealtime and that the restrictions imposed upon them during this time did not

predominantly benefit Butler. The case was thereby dismissed.

Note that the decision was 2-1, with dissenting Judge Greenaway finding that, because discovery had not yet been conducted, there were not enough facts to dismiss the case. Substantively, however, Judge Greenaway took issue with the majority, finding that it failed to grant sufficient weight to the fact that Plaintiffs are required to be ready, both physically and psychologically, at a moment's notice to address emergencies in the prison. This readiness to serve may itself be work, benefiting Butler, and thus could be compensable. If officers were not mandated to remain at the prison during mealtime in uniform in order to assist in security emergencies, Butler might have to employ other officers during meal periods for example. Because Judge Greenaway found that Plaintiffs stated a plausible claim in his view, he disagreed with dismissal.

### **Recommendations**

Although the Third Circuit affirmed dismissal here, the analysis of both majority and dissent are instructive for employers.

To the extent that employers are not compensating employees for their mealtimes, employers should ensure as much as possible that employees are relieved from their regular duties during that time. This also includes relieving them of any readiness to act, meaning that they are not expected to be called back to their duties to serve during uncompensated mealtime. Where appropriate, permit employees personal freedoms during their mealtime. For example, allow them to leave the work site, to run errands, and to engage in their own personal activities. Do not place specific restrictions on them (e.g. may not rest or sleep, read personal materials, change clothing as needed). Ensure that employees understand what their mealtimes may or may not entail, and that they do not engage in work duties during uncompensated time.

---

The Porzio Employment Law Monthly is a summary of recent developments in employment law. It provides employers with an overview of the various legal issues confronting them as well as practical tips for ensuring compliance with the law and sound business practices. This newsletter, however, should not be relied upon for legal advice in any particular matter.