

ASK THE LEAGUE, AUGUST-SEPTEMBER 2015

Do towns need to provide bathroom, coffee or lunch breaks for their employees?

There is no federal or Vermont law that requires employers to provide their adult employees any specific period of time for breaks from work. Vermont law does require that employers “provide an employee with reasonable opportunities during work periods to eat and to use toilet facilities in order to protect the health and hygiene of the employee.” 21 V.S.A. § 304. In addition, there may be requirements for work breaks within employee or union contracts or in a town’s personnel policy.

Under the federal Fair Labor Standards Act (FLSA), if an employer allows for short breaks, the employer must compensate the employee for that time unless the break lasts at least 30 minutes and the employee is completely uninterrupted and free from work. On the other hand, when breaks last less than 30 minutes or are not free from work, the break time must be included in the sum of hours worked by the employee during the work week and considered in determining if overtime is due. 29 C.F.R. 785.18, 19.

The requirements of the FLSA do not apply to all municipal employees and officials. The FLSA exempts certain categories of personnel including, but not limited to, volunteers, independent contractors, certain trainees, elected officials and their personal staff members, officials in policy-making positions, certain recreational employees, certain “white-collar” positions, and the appointees of elected officials such as the assistant clerk and assistant treasurer.

Towns need to be sure that employees who are covered by the FLSA (so-called “non-exempt employees”) do not work during their meal breaks. These employees must be completely relieved from their job duties during breaks. Work performed during a meal break must be compensated if the employer knows or has reason to know that work is being performed and permits it to be done. If a town does not wish an employee to perform work, then it must prohibit the employee from doing so or otherwise compensate the employee for the time. In other words, an employer may not accept the benefits of work performed without paying for it. It is not enough to state in a policy that non-exempt employees may not work during their meal break. The town has a duty to control its policy and see that work is not performed. It cannot just sit back and accept the benefits of an employee’s work without proper compensation.

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