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CLIENT ALERT

August 23, 2015

Employers Must Pay Employees for Voluntarily Working Through Lunch

Employers may be required to pay overtime when employees voluntarily work during their lunch breaks, even if the employees fail to record these hours.

In *Vitali v. Reit Management and Research LLC*, an employee regularly worked during her lunch break. She sued her employer for overtime pay that she would have received had this time been recorded. The employer claimed that it did not owe the employee overtime pay because (1) she never reported the hours in question; and (2) she had not complied with a company policy requiring her to obtain her manager's approval before working overtime.

The Appeals Court ruled in favor of the employee. It noted that the employer should have known employees worked during lunch because many employees had asked how to record lunch hours. It also noted that the overtime policy was not consistently enforced and would not necessarily apply to hours worked during lunch.

To ensure that your business complies with the overtime pay laws, keep the following in mind:

- Make it is easy for employees to record any hours they work during lunch.
- Train employees on how to use your time-keeping system.
- You, not your employees, are responsible to ensure that all employee hours are recorded.
- If you have reason to know that employees are working through lunch, you are required to credit those hours, even if the employees have failed to record them. Make sure you follow up with employees who are eating at their desks, or have questions regarding your time-keeping system or policies.
- Consistently enforce your overtime policies.
- Implement and consistently enforce policies about working during lunch breaks.

If you would like to speak to someone about this or other provisions of the law, please contact Diane DeGiacomo, Chair of our Employment Law Group.