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HOSPITALITY LAW

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Employers need not detail each service activity to calculate tips

Banquet tip pool complied with Massachusetts wage statute

By Eli Z. Freedberg

Employers in Massachusetts have the right to craft reasonable tip pooling policies that approximate the amount of direct service tipped employees provide to guests, according to a recent court decision from the U.S. District Court for the District of Massachusetts.

In *Belghiti v. Select Restaurants, Inc.*, No. 10-cv-12049, (D. Mass. 03/31/14), Sidel Belghiti worked at Top of the Hub Restaurant, which hosts between 600 to 800 banquet events each year. TOH charged a mandatory 14 percent service charge for each private event banquet, which TOH then distributed in its entirety to service employees who provided direct customer service at the event. Belghiti was a "setup" employee whose primary responsibilities included setting up and breaking down tables, chairs, and furniture for events. When banquet events were understaffed, setup employees, including Belghiti, also bussed tables, replenished buffet and coffee stations, ran food from the kitchen to tables, and passed hors d'oeurves. TOH always paid setup employees at least the full minimum wage and did not apply a tip credit to their wages. When setup employees provided direct customer service, TOH alloted them a one-half share of the service charges and tips collected at the banquet event. Full-time servers, on the other hand, earned a full share. The company recorded when setup workers earned tips from banquets by having them sign a Function Gratuity Staffing Sheet before the end of the event to document their participation as service employees during their shifts.

In his lawsuit, Belghiti claimed that he should have received a full share of the tips and service charges when he performed direct service duties at banquets. He also alleged that the FGSS

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Offset as defense to FLSA suit may mitigate unpaid wage claims

Security officers alleged they were not compensated for roll call

By Jeffrey H. Ruzal

A federal district court in Michigan recently preserved for trial the question of whether a defendant employer may mitigate its back wage liability by offsetting paid break time, which would effectively extinguish plaintiff employees' claims under the Fair Labor Standards Act.

In *Hayes, et al., v. Greektown Casino, LLC, et al.*, No. 12-1552 (E.D. Mich. 03/31/14), a group of current and former security officers who were employed by Greektown Casino alleged that the their employer violated the FLSA by failing to compensate them for all hours worked. The security officers claimed that, from at least 2008 through 2012, the casino required them to attend mandatory, pre-shift roll call, for which they were not compensated. The employees alleged that the roll call lasted approximately 15 minutes, and that security officers also spent around 10 minutes before and after each shift collecting equipment necessary to perform their job and returning it to the proper location. checking-in and -out equipment, such as radios, keys and security wands.

Greektown moved for summary judgment to dismiss workers' claims, arguing that it paid the security officers for two daily 30-minute break periods, during which time they were relieved from duty and did not perform any work. This paid break time, Greektown argued, exceeded the amount of time the employees allege to have spent attending roll-call and gathering or returning equipment.

In responding to Greektown's argument, the security officers claimed that they were not relieved from duty during their break periods; rather, their break time was predominantly

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spent for the benefit of their employer, and that Greektown was required to compensate them for that time. The security officers claimed that during their break time, they were required to respond to radio calls, stay within radio range, and remain on the employer's premises unless granted permission to leave. They further argued that there were instances where their break periods were interrupted to respond to calls to duty.

The legal standard in the 6th Circuit is that an employee is not entitled to compensation under the FLSA for break or meal time where the employee can pursue her or his meal time adequately and comfortably, is not engaged in the performance of any substantial duties, and does not spend time predominantly for the employer's benefit. While the parties do not dispute the legal standard, they disagree as to the factual issue of whether the security officers spent their "break" periods predominantly for their own or Greektown's benefit.

The court denied Greektown's motion for summary judgment, finding a disputed issue of fact as to the extent of the security officers' freedom during their breaks, "particularly as to the frequency of calls to duty during breaks." The court found summary judgment to be imprudent because of the parties' dispute of material facts; therefore, the court did not reach the question of whether Greektown may offset any amount it may have paid its employees for time not worked against the amount the workers claim to be owed for unpaid work time.

Breaks part of collective bargaining agreement

The security officers in *Hayes v. Greektown Casino* are represented by the International Union, Security, Policy and Fire Professionals of America and covered by a collective bargaining agreement. Under the CBA, security officers were also given two paid 30-minute breaks, one during each half of their shift. If a break was interrupted by an emergency call, employees were promised that the time would be made up. Those who claimed that their time was not made up filed grievances with the union, all of which had been resolved at the time the lawsuit was heard. ■

However, the court noted that Greektown's offset argument is "well-taken" and that the employees failed to provide any authority challenging a legal holding that paid lunch time may be offset against unpaid pre- and post-shift activities.

It is unclear whether offset will be permitted in this case; however, employers should not incorporate wage offsets into their employment practices, or assume that an offset defense will be available if a wage dispute arises. The best practice is for employers to allow employees to use their break time for their personal benefit and instruct them that they should not work during their breaks. If the occasion arises where employees are required to work during their breaks, they must be compensated for the time that they are performing work.

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