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ADVISORY 94/2

An Advisory from the Attorney General's
Fair Labor and Business Practices Division
on Meal Periods

Pursuant to the authority granted to the Attorney General by St. 1993, c. 110, §§ 269 and 331, the following advisory is hereby issued:

MEAL PERIODS

Massachusetts General Law chapter 149, section 100, provides that "no person shall be required to work for more than six hours during a calendar day without an interval of at least thirty minutes for a meal." Iron works, glass works, paper mills, letter press establishments, print works, bleaching works, and dyeing works are specifically exempted from this requirement. In addition, the Attorney General, in his discretion may under certain circumstances as set forth in G.L. c. 149, § 101, grant further exemptions from the provisions of Section 100. Section 100 does not require that the employer compensate the employee for the meal period. However, if the employee's movement during meal periods is

restricted in any manner or if the employee is required to perform any job function during such periods, the employee must be paid for the meal time. For example, if a teacher in a private school is assigned to a lunch room to provide general supervision to students and eats his or her lunch at that time, the teacher must be compensated for the time. Likewise, if an employee is required to sit at his or her desk to answer phones during the thirty minute meal period, the employee must be paid for this thirty minute time frame.

Also note, that only an employee may waive the thirty minute meal period requirement. And, the waiver must be voluntary. Any employer who coerces an employee to waive the requirement is in violation of the statute. If an employee does waive his or her right to the meal period, and the employer assents, the employer may have certain payment obligations to the employee. For example, if an employee is scheduled to work 8:00 a.m. to 4:00 p.m., and the employee waives his or her 30-minute lunch with the assent of the employer, the employee must be compensated for the full eight hours. If, however, the employee waives the 30-minute period in order to leave at 3:30 p.m., the employee need only be paid for seven and one-half hours. In contrast, if either of the preceding situations occurs without the consent of the employee, the employer is in violation of section 100.

A violation of section 100 occurs each time that the employee is required to work in excess of six hours without at least a thirty minute meal break. In some cases, compliance with the law may even require more than one meal period in a calendar day. For example, if an employee's shift is from 8:00 a.m. to 6:00 p.m., with an allotted thirty minute lunch period from 11:30 a.m. to 12:00 noon, the employee would be entitled to a second meal period if he or she works beyond the 6:00 p.m. scheduled end of the shift.

The Attorney General intends to rigorously enforce section 100. Violation of the statute by any employer, superintendent, overseer or agent is punishable by a fine of not less than three hundred nor more than six hundred dollars following criminal prosecution.

Date: September 30, 1994