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Opinion No. 08-187

Unpaid Rest Breaks or Meal Periods under Tenn. Code Ann. § 50-2-103(h)

QUESTION

Is an employer who provides employees two 20-minute unpaid breaks that employees may use however they wish and during which the employee is not required to perform any duties for the employer's benefit in compliance with Tenn. Code Ann. § 50-2-103(h)?

OPINION

As a general rule, for employees scheduled to work six hours consecutively, providing such employees two 20-minute unpaid breaks that employees may use however they wish and during which the employee is not required to perform any duties for the employer's benefit would not satisfy the requirements of Tenn. Code Ann. § 50-2-103(h).

ANALYSIS

Section 50-2-103 of the Tennessee Code governs the compensation of employees in private employment settings. Op. Tenn. Att'y Gen. No. 06-169 (Nov. 13, 2006). Under this provision, private employers must provide employees with a 30-minute unpaid break if the employees are scheduled to work six consecutive hours:

> (h) Each employee must have a thirty (30) minute unpaid rest break or meal period if scheduled to work six (6) hours consecutively, except in workplace environments that by their nature of business provide for ample opportunity to rest or take an appropriate break. Such break shall not be scheduled during or before the first hour of scheduled work activity.

Tenn. Code Ann. § 50-2-103(h).

The Department of Labor and Workforce Development ("Department") is empowered to enforce § 50-2-103, the violation of which constitutes a class B misdemeanor. *Id.* at §§ 50-2-103(i)-(j). In addition, the Department may assess a civil penalty for willful violations of these provisions. *Id.* at § 50-2-103(i).

This Office has interpreted this provision in the past,[1] opining that a 15-minute rest break "would not suffice to interrupt the six consecutive hours required by [then-section] 50-2-103(d) so as to relieve an employer of providing a thirty minute unpaid rest break or meal period." Op. Tenn. Att'y Gen. No. 94-060 (April 19, 1994). In reaching this conclusion, this Office reasoned that the legislature intended "for employees to be provided an appropriate rest break or meal period during any work day in which the employee was scheduled to work for a period of at least six hours." *Id.* Given this clear legislative intent, the Office concluded that "a fifteen minute rest break would not suffice to nullify the requirement that an employee who is scheduled to work 'six hours consecutively' must be provided with a thirty minute unpaid rest break or meal period." *Id.*

The materials accompanying the request ask us to assume certain facts. First, the employees have complete freedom during their 20-minute breaks, and may leave the employer's premises during that time. Employees may also use their cell phones, or a payphone to conduct personal business, and the employer has a lounge and locker room where employees may spend time. In addition, employees are not required to perform any duties during their breaks and the break time is not spent for the employer's benefit.

The question posed is one of statutory interpretation, requiring us to determine whether allowing employees to have two 20-minute unpaid breaks or rest periods during a shift satisfies the requirements of Tenn. Code Ann. § 50-2-103(h). In construing statutes, we must "ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the plain and ordinary meaning of the language used. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). The statutory language must be "read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning." *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes that are related to the same subject matter are supposed to be read *in pari materia*. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). We must "construe the statute so that no part will be inoperative, superfluous, void or insignificant." *State v. Northcutt*, 568 S.W.2d 636, 637-38 (Tenn. 1978).

Applying these principles of statutory interpretation, this Office concludes that, generally, for employees scheduled to work six hours consecutively, providing such employees two 20-minute unpaid breaks that employees may use however they wish and during which the employee is not required to perform any duties for the employer's benefit would not satisfy the requirements of Tenn. Code Ann. § 50-2-103(h). This provision unambiguously requires that, subject to a limited exception, each employee who works "six hours consecutively" shall have at least one 30-minute unpaid rest break or meal period. As this Office noted in 1994, in enacting § 50-2-103(h), the legislature intended to provide "an appropriate rest break or meal period" to employees who worked six-hour shifts, or longer. Op. Tenn. Att'y Gen. No. 94-060 (April 19, 1994). In Opinion No. 94-060, the question involved a hypothetical employer who allowed employees 15-minute unpaid breaks during a six-hour shift, which this Office concluded was insufficient to satisfy the plain statutory requirement of a 30-minute unpaid break. *Id.* Relying

[1]At the time this Office issued Opinion No. 94-060, § 50-2-103(h) was codified at Tenn. Code Ann. § 50-2-103(d).

upon the same logic, this Office also concludes that an employer who allows employees two 20-minute unpaid breaks would not comply with Tenn. Code Ann. § 50-2-103(h).

There is, however, an exception in the statute for "workplace environments that by their nature of business provide for ample opportunity to rest or take an appropriate break." *Id.* Whether a particular workplace environment falls within this exception is "a factual issue to be decided on a case-by-case basis." Op. Tenn. Att'y Gen. No. 94-060 (April 19, 1994). While the question posed here requires us to assume several of the factors that are relevant in conducting this factual inquiry, a critical consideration remains missing. In determining whether employers may allow employees shorter breaks, § 50-2-103(h) requires consideration of employers' "workplace environments that *by their nature of business* provide for ample opportunity to rest or take an appropriate break." Tenn. Code Ann. § 50-2-103(h) (emphasis added). Thus, whether an employer may rely upon the exception does not depend merely on the amount of time given for an unpaid rest break or meal period, or on what the employee may do during such a break, but on the nature of the job. As before, this Office notes that this inquiry is factually dependent and must be decided on a case-by-case basis. For example, the Department has made a regulatory determination that waiters and waitresses, by the nature of the businesses where they work, have sufficient flexibility to take breaks so as to fall within the exception in Tenn. Code Ann. § 50-2-103(h). *See* Tenn. Comp. R. & Regs. 0800-5-2-.04(3).

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