

## MEMORANDUM OF LAW

DATE: February 10, 1995

TO: Larry Gardner, Deputy Director, Water Distribution  
Division, Water Utilities Department

FROM: City Attorney

SUBJECT: Lunch Periods for Field Crews

### Questions Presented

1. Is the City mandated to give crews a thirty minute lunch break?
2. Can the City deduct thirty minutes from an employee's wages even when the employee works through lunch?
3. May the crew make the decision to work through the lunch break?

### Short Answer

The City is not required to give, and employees are not required by law to take, lunch breaks, however, employees must be paid for all hours worked. The decision to work through lunch may only be invoked in limited circumstances and should be a joint management/employee decision.

### Background

Frequently, City crews are assigned to work scheduled jobs on weekends or holidays. On these jobs crews are paid at the premium overtime rate. On occasion, the crew supervisor, with the consent of the crew, may decide to work through lunch and complete the job without a break.

This break-free schedule is not mandated by the nature of the repairs or any emergency conditions. The motivating factor appears to be a desire to finish the job as quickly as possible. You are requesting information regarding the propriety of this practice.

### Analysis

There are no statutory mandates, on either a state or federal level, which require employers to grant, or employees to take, rest and/or meal breaks. However, as a practical matter, most employers recognize the efficacy of allowing employees regularly scheduled breaks. The City also recognizes the importance of regular breaks.

This recognition is memorialized in Article 17 of the Operating Procedures ("OP") between the City and American Federation of State, County and Municipal Employees ("Local 127"). That Article states: "The City of San Diego endorses the practice of progressive management which recognizes that regular, authorized rest periods are beneficial both to employees personally and to the productivity of the

organization."

Guidelines are provided to ensure that maximum benefit is derived from the break periods. The guidelines indicate that employees should have two (2) fifteen-minute rest periods in an 8-hour work day in addition to a 30-minute meal break. The guidelines also indicate that the following practices shall not be allowed:

- a. combining two daily rest periods into one 30-minute period;
- b. "saving" rest period time to justify extended lunch hours or shortened work days;
- c. accumulating rest period time from day to day;
- d. applying rest period time to compensatory or other time off, or in the considerations or computations concerned with overtime compensation.

City of San Diego, Operating Procedures, for Local 127, American Federation of State, County and Municipal Employees, pp. 21-22 (1994).

Use of the mandatory language "shall" indicates these practices are impermissible except, perhaps, in emergency circumstances dictated by the work in progress.

Lunch breaks are discussed in Article 35 of the OP which, amongst other things, provides that "a normal work day shall normally consist of eight (8) consecutive hours not including time for lunch." *Id.* at p. 39. While this provision does not require a lunch break, it certainly recognizes that one may occur in a "normal" work day. There is, however, no prohibition on skipping a lunch break and working the eight (8) consecutive hours.

The provisions of the OP were implemented following the impasse in the last negotiating period. The cited sections are, therefore, applicable until the current OP expires on June 30, 1995. The provisions of the OP are guidelines only and, in certain circumstances, as long as the mandatory prohibitions are not violated, exceptions to the guidelines may be made which would allow for working through lunch. Working through lunch, however, has implications for the payroll.

Employees who work through meal time must be compensated at their regular rate of pay (here, premium overtime). The Fair Labor Standards Act, 29 U.S.C. Sections 201-219, provides that meal times must be compensated unless the employee is relieved of all duties during the meal period. Further explanation of this provision is found at 29 C.F.R. Section 785.19 (1992) which provides:

- Bona fide meal periods are not worktime.
- Bona fide meal periods do not include coffee breaks or time for snacks. These are rest

periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period.

. . . The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating.

The regulation provides that unless an employee is completely relieved from all duties during a meal break, he or she must be compensated. This does not mean, however, that an employee must be able to leave the worksite to be relieved from all duties. 29 C.F.R. Section 785.19 also provides "it is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period." Under this provision, as long as an employee is relieved from duty and is completely free to rest or eat, he or she need not be compensated. Under all other circumstances and for periods less than thirty (30) minutes, such as breaks, employees must be compensated.

In sum, the practice set forth in your memo is permissible provided that management concurs and the practice does not violate the guidelines of the OP. If you have other questions, please feel free to call me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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cc Rich Snapper

Cathy Lexin

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