August 20, 2018

Q: Some of our staff are super-diligent and working right through lunch breaks sometimes. Can we get in trouble with OSHA or other regulators if we stress to them to take their breaks but they still don’t?

A: Your problem is not with OSHA, but with the U.S. Department of Labor; also the Illinois Department of Labor enforces overtime laws. Under both federal and state laws, employers are required to pay time and one-half of the hourly wage for all hours in excess of 40 hours per work week. Some employers, such as nursing homes and hospitals, can adopt another method of paying overtime: Any employee who works more than eight hours in a day or 80 hours in a two week time frame must be paid overtime. This is the “eight and eighty” method. Under either method, the time spent working when the employee was supposed to be on a lunch break can create overtime. The fact that the employee disregarded your work rules will not defeat the overtime claim. You do not have to “beg” employees to follow your work rules: their failure to do so could subject them to discipline, including up to discharge. You can write them up each time they violate a work rule. Also, you can tell them that they will get only three warnings of the violation and you will terminate them on the fourth. Be aware that federal and/or state regulators can audit your entire payroll looking for overtime violations. Government audits usually end with an order requiring a significant financial payment for all unpaid overtime. In addition, the final order will require the employer to pay all overtime in the future. The sooner you enforce your work rules, the better. Thus, you will minimize your exposure to the payment of overtime.

Reprinted in part out of McKnight’s and authored by Attorney John Durso.