



## DEAR HRK

# Should we use automatic lunch punches to satisfy meal break requirements?

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The Fair Labor Standards Act (FLSA) requires employers to maintain specific timekeeping records for non-exempt workers. Some states, like Rhode Island and Illinois, require employers to maintain timesheet records for both exempt and non-exempt employees. Once you factor in various meal and rest break requirements (which vary by state and jurisdiction), timekeeping can feel like a job in itself.

The federal Department of Labor (DOL) has specified that auto-deducting meal breaks do not violate the FLSA so long as employers maintain accurate records of time worked, including if work is performed during a meal break. So, are automatic lunch punches a good practice to streamline timekeeping efforts? We'll weigh out the pros and cons of it.

### **Advantages of Auto-Deductions**

Auto-deductions can simplify recordkeeping, particularly in work environments where the schedule is predictable, and interruptions are uncommon, for example: manufacturing or production. In addition, auto-deduction practices may reduce an employer's labor cost, as it's certainly possible that employers pay for meal breaks in which employees forget (or neglect) to clock out. And of course, auto-deductions can support an employer's effort to be in compliance with state requirements.

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## Disadvantages of Auto-Deductions

The primary disadvantage of auto-deductions is that employee records may be inaccurate, which can lead to serious wage and hour violations such as unpaid compensation, including overtime. Work environments which have a high tendency of disruption, such as healthcare, IT, or service-facing roles may not be suitable for auto-deductions as the workday is often unpredictable. Without undisputed records of work time, an employee may claim to have worked during a lunch break, placing the responsibility on the employer to prove otherwise. There are a few high-profile court cases that spring to mind where this “shortcut” has been very costly to employers, including a California electronics company that was court-ordered to pay \$4.9 million in auto-deducted meal breaks.

## Review the Risk

While most timekeeping software systems offer an auto-deduction option, it is important to honestly evaluate your business and decide whether the practice could help or hurt your compliance efforts. Think about the cadence of your workflow, the needs of your clients or customers, and your overall workforce makeup. And do not forget to consider your remote employees! Employers should have clear timekeeping policies for workers who are not onsite, as it is especially difficult to screen meal breaks for those who cannot be visually monitored.

## Five safeguards that may support compliance efforts

As the above-mentioned California case represents, the law is very clear that non-exempt employees must be paid for all time worked. For this reason, automatic deduction policies can create big problems for employers unless there are safeguards in place. Employers should provide a method for employees to cancel the auto-deduction if they work during some or all of their breaks.

1. Ensure you have a written policy about how your auto-deductions work and the procedure with which to override or cancel those deductions should an employee work through their break. Be sure to distribute the policy/ process in writing and collect employee acknowledgement
2. Create a culture of compliance where new hires, current employees, and managers are regularly trained on how to comply with the policy
3. Ensure managers document in writing all auto deduction adjustments if the employee worked during their break
4. Ensure employees receive or have access to their timecard, including deductions taken each pay period

## Consider Best Practices

The following guidelines may support your organization's efforts toward meal break compliance without using an auto-deduction:

- Provide employees with full and timely meal periods as required by state law

- Discourage employees from skipping meal breaks under any circumstance, including late arrival or early departure
- Mandatory lunch meetings or trainings should be paid
- Train employees and managers on how to use timekeeping systems and procedures to accurately record time worked
- Hold managers accountable for managing their direct reports' time and scheduling appropriate meal and rest breaks
- Provide employee instruction about when and how to record missed meal periods
- Have employees verify time submissions stating that they have accurately recorded all time worked
- Lessen interruptions at meal breaks; consider staggering lunches or reducing (or eliminating) operations if possible
- Encourage managers to respect employee meal breaks
- Include a meal and rest break policy in your handbook

### **Keep your State and Industry Laws Top of Mind**

Meal and rest break laws are derived from state regulations, and multi-state employers should be aware that a one-size-fits-all approach may not satisfy all state requirements. The risk of non-compliance can be costly.

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