

THE CASE OF THE “MISSING” MINUTES

A Wage and Hour Mystery in the Pacific Northwest

PLAYERS

WHO?

WHAT?

WHERE?

ALLY MCLAIN
ASSOCIATE | PORTLAND



ALLY MCLAIN
ASSOCIATE | PORTLAND

MATT TRIPP
PARTNER | CALIFORNIA



MATT TRIPP
PARTNER | PORTLAND

HEATHER VAN METER
PARTNER | VANCOUVER



HEATHER VAN METER
PARTNER | VANCOUVER

DAVE WORLEY
PARTNER | SEATTLE



DAVE WORLEY
PARTNER | SEATTLE

WHY WE'RE ALL IN THIS ROOM

Federal and state laws require all employees to be compensated at least at minimum wage for time worked leading to wage/hour disputes.

Specifically, California's wage/hour playbook has arrived in the PNW:

- Filings against Washington and Oregon employers are climbing — a meaningful share traces to California-based plaintiffs' firms.
- Washington and Oregon now look like California did a decade ago: strict meal-and-rest rules, statutory penalties that reward class-wide violations, and no equivalent of California's recent reforms.
- Most claims are not about intentional underpayment — they arise from timekeeping systems and policies that don't match state law.
- A few minutes per shift, compounded across a workforce, produces multimillion-dollar resolutions — often with limited or no insurance coverage.

CASE FILE

Agenda

Four rooms. One Mystery.

- Room 1** The Study (Washington) – meal and rest break rules, waivers, and the new HB 2479
- Room 2** The Conservatory (Oregon) – meal and rest break rules, waivers, and ORCP 32 I
- Room 3** The Ballroom (Class Actions) – why the risk is rising and how to limit exposure
- Room 4** The Bonus Room (Other States) – an overview of meal and rest break rules in Idaho, Montana, Alaska, and California

The goal: by the end, you can name the suspect, confiscate the weapon, and close the case.

PLAYERS

WHO?

WHAT?

WHERE?

THE SUSPECTS

MR. ROUNDING



MR. ROUNDING

Time-clock rounding that quietly trends in the employer's favor.

MISS AUTO-DEDUCTION



MISS AUTO-DEDUCTION

The automatic meal deduction that fires even when the employee worked.

THE INTERRUPTED BREAK



THE INTERRUPTED BREAK

A meal cut short or a supervisor's "quick question."

THE MISSING SECOND MEAL



THE MISSING SECOND MEAL

The long-shift meal that never gets prompted.

PLAYERS

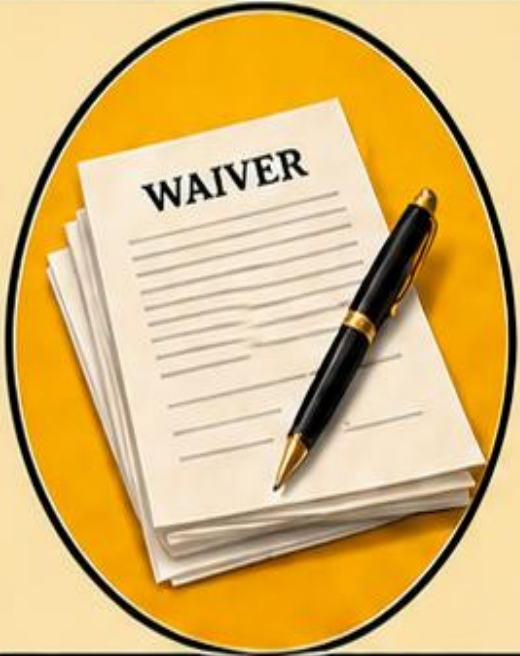
WHO?

WHAT?

WHERE?

THE SUSPECTS

THE BLANKET WAIVER



THE BLANKET WAIVER

A system default “waiver” no one knowingly signed.

SIR DON AND LADY DOFF



SIR DON AND LADY DOFF

The alleged time to get work clothes on/off or to log onto/off computers.

THE PHANTOM OVERTIME MENACE



THE PHANTOM OVERTIME MENACE

Overtime claimed by and employee without a record and “off the clock” work.

PLAYERS

WHO?

WHAT?

WHERE?

THE WEAPONS

THE TIME CLOCK



THE TIME CLOCK

Non-compliant rounding and missed-punch corrections that default to the employer.

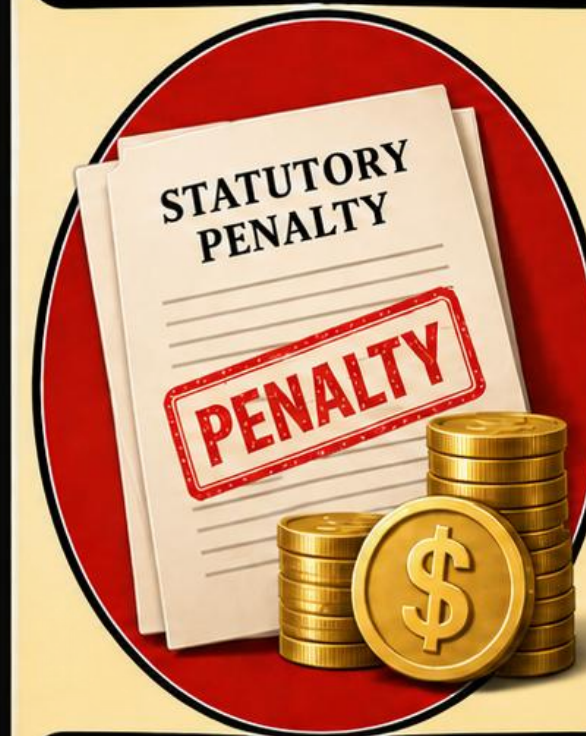
THE OFF-THE-CLOCK MINUTE



THE OFF-THE-CLOCK MINUTE

Pre- and post-shift work that never gets captured.

THE STATUTORY PENALTY



THE STATUTORY PENALTY

The multiplier that turns small underpayments into class-worthy numbers.

THE SINGLE COMPLAINT



THE SINGLE COMPLAINT

One employee's grievance that opens the whole workforce to scrutiny.

ROOM 1: THE STUDY (WASHINGTON)

Meal & Rest Break Compliance

WASHINGTON – THE BREAK RULES

The baseline entitlements.

- Meal Period: a 30-minute meal period for shifts over 5 hours. Meal periods must be uninterrupted and duty-free, or the interrupted time must be paid. Meal periods may be waived.
- Second Meal: generally required on shifts of 10 hours or more.
- Rest Period: a paid 10-minute rest period for each 4 hours worked. Rest periods cannot be waived.

Employers have an obligation to require employees to take breaks and cannot discourage breaks in practice, even where the written policy is fine.

WASHINGTON – THE WAIVER TRAP

Waivers are allowed – but the burden is on the employer.

- Meal waivers must be voluntary, knowing, and revocable. Although waivers do not need to be in writing, it is preferred.
- The employer bears the burden of proving each waiver was knowing and voluntary, and preferably agreed to before the missed or late meal period.
- In a class action, that burden is hard to meet – especially where practices suggest employees were discouraged from taking breaks.
- Miss Auto-Deduction automatically deducts one or two meal periods and is only safe if paired with real-time attestation and regular supervisory review.

WASHINGTON – HB 2479

(EFFECTIVE JUNE 11, 2026)

A single complaint just became a company-wide problem.

- Significantly expands the Department of Labor & Industries' (L&I) authority to investigate wage claims.
- A single employee complaint can trigger a company-wide investigation whenever L&I identifies common questions of law or fact — no additional complaints required.
- Eliminates the prior \$20,000 cap on civil penalties for willful violations — replaced with the greater of \$1,500 or 10% of unpaid wages.
- Adds escalating penalties for employers who resolve wage complaints (including by settlement) more than once in a 12-month period.

WASHINGTON – THE DAMAGES ENGINE

Why the math makes these cases worth filing for L&I or plaintiff lawyers:

- Willful withholding of wages — including pay owed for missed breaks — creates liability for double the amount withheld as exemplary damages, plus the employee's attorney fees and costs.
- The willfulness bar is low, and a plaintiff can recover both double damages and prejudgment interest on the same violation.
- Parallel tracks: one unpaid-break complaint can become a regulatory investigation and a class action at the same time.

E.g.: 30-minute meal break x \$35.00/hour wage x 400 occurrences = \$7,000 x 2 = \$14,000 + interest = \$15,400 PER WORKER (not counting penalties, attorney fees, costs).

ROOM 2: THE CONSERVATORY (OREGON)

Meal & Rest Break Compliance

OREGON – THE BREAK RULES

- Meal period: a 30-minute meal period for shifts over 6 hours. Employees must be completely relieved of all duties. Employers have a duty to monitor and ensure these breaks are being taken.
 - Meal periods generally cannot be waived except for certain industries (e.g., tipped servers).
- Second meal period: required for shifts of 14 hours or more.
- Rest period: a paid 10-minute rest period for every 4 hours or major portion thereof (two hours and one minute through four hours).
 - 15-minute breaks must be provided to minors under the age of 18.
 - Rest periods cannot be waived.

OREGON – THE SHORTENED MEAL IS WAGES

A meal under 30 minutes is compensable – not a technicality.

- Any meal period under 30 minutes is compensable time and should be flagged for review and pay correction.
- In *Athena v. Pelican Brewing Co.* (2025), the Oregon Court of Appeals held that compensation owed for a meal period lasting less than 30 minutes qualifies as wages, not a penalty.
- Because they are wages, employees get a private right of action — plus penalties up to 30 days of wages for terminated employees, and possible overtime when it pushes them past 40 hours.

OREGON – LIMITED MEAL WAIVERS

A narrow exception – get the paperwork right, or don't rely on it.

- Unforeseeable equipment failures, acts of nature or other exceptional and unanticipated circumstances that only rarely and temporarily preclude the provision of a meal period.
- Undue hardship for the employer's business.
- If industry practice or custom has established a paid meal period of less than 30 minutes (but no less than 20 minutes) during which the employee is relieved of all duties.
- If the employee is a tipped food and beverage server and has voluntarily waived their meal period.

OREGON – WINN V. BLAKESLEE

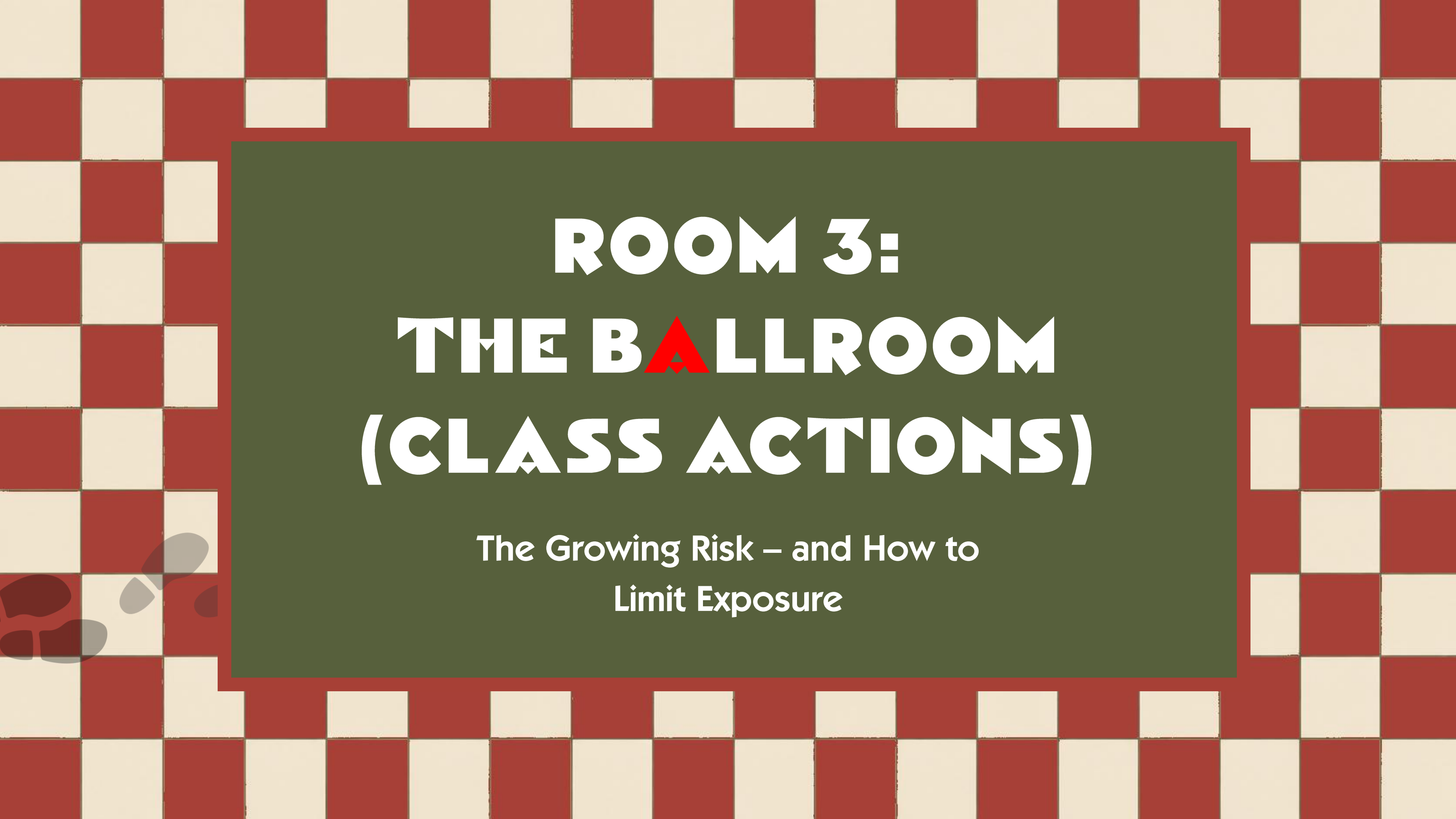
Winn v. Blakeslee Vineyard Estate, Inc., 352 Or App 803 (2026).

- The \$200 cap: the \$200 statutory damage under ORS 652.615 for unlawful paycheck deductions applies per category of violation, in the aggregate — not per paycheck.
- The cure: under ORCP 32 I, an employer that offers appropriate compensation, correction, or remedy can move to dismiss the class claim.
- The trial court let the employer supplement an inadequate notice within 60 days, then dismissed the class claims once the cure was complete — the Court of Appeals affirmed on every point.

TWO ROOMS, ONE COMPARISON

Washington v. Oregon – where the rules diverge

	Washington	Oregon
Meal period trigger	Over 5 hours, unpaid if uninterrupted	Over 6 hours, unpaid if uninterrupted
Rest period	Paid 10 minute per 4 hours	Paid 10 minute per 4 hours or major portion
Missed or shortened meal period	Unpaid wages, OT, double penalties	Unpaid wages, OT, penalties
Waivers	Allowed without written agreement but employer bears burden to prove knowingly/voluntary	Individual written waivers allowed in limited circumstances
Rounding	Neutral rounding generally permitted as long as it does not favor employer	Favors exact capture
Newest development	HB 2479 expands L&I enforcement authority and removes penalty cap	<i>Winn</i> caps deduction damages and offers hope for use of ORCP 32 I as a cure mechanism



ROOM 3: THE BALLROOM (CLASS ACTIONS)

The Growing Risk – and How to
Limit Exposure

WHY THE RISK IS RISING

How small errors become big cases.

- Putative class actions are the new baseline in both states, not a spike.
- The model: find (or imagine) a systemic practice, aggregate it across the workforce, multiply by statutory penalties.
- California's 2024 PAGA reform pushed an experienced plaintiffs' bar north, and neither WA nor OR has a comparable reform.
- Oregon is the natural second front: same framework, plaintiff-friendly Portland-metro venues.
- Targets: Any employer with a large hourly workforce: hospitality, delivery, warehouse, restaurants, trucking, healthcare, grocery, etc.

EXHIBIT A: THE FILING DATA

The rise is not anecdotal.

- Washington employment class actions: 54 in 2023, 773 in 2025, and 658 more in the first half of 2026.
- Six firms, most of them based in California, filed nearly 700 of them across 2025 and 2026.
- First six months of 2026 alone: 272 filings by one firm, 145 by a second, 111 by a third.
- Meal and rest break claims drive the largest share; pay transparency postings are close behind.

WHO ELSE IS IN THE BALLROOM

There are fewer plaintiffs here than you would think.

- Roughly half of the 215-plus Washington pay transparency class actions were brought by nine named plaintiffs; one firm filed 150 of them.
- California firms are filing dozens of cases, typically brought by former employees terminated for cause.
- Claims are sourced by advertisement and by serial plaintiff, not by grievance. The fee award is the business model.
- A recordkeeping gap is worth as much as an actual denial of a break, because the gap is the prima facie case.
- Batch personnel file demands under RCW 49.12.250 cost them nothing, produce your timekeeping records, and generate \$250 to \$1,000 per employee if you are slow.
- Employers end up settling exposure rather than liability, and everyone in the case knows it.

THE ROUNDING PROBLEM

Rounding is where a pattern-or-practice theory is born.

- In Washington and under federal law, neutral rounding is generally permitted — but it's vulnerable if it systematically favors the employer.
- In Oregon, recent guidance and litigation trends question whether rounding is defensible at all.
- Risk multiplies when rounding is combined with auto-deductions, missed-punch corrections, or incomplete records — supporting a pattern-or-practice theory that is expensive to defend.

A NEW WEAPON: THE JOB POSTING

Washington's pay transparency law became a class action engine.

- RCW 49.58.110: every posting by an employer with 15 or more employees must state the wage range and describe benefits.
- *Branson v. Washington Fine Wine & Spirits* (Wash. Sept. 4, 2025): a job applicant is anyone who applies. No good-faith interest, no qualification, no injury.
- Statutory damages of \$100 to \$5,000 per violation, plus attorney fees and costs.
- SSB 5408, effective July 27, 2025: five business days to cure after written notice, available through July 27, 2027.
- Archive every posting as published. The fight is over what it said the day the plaintiff applied.
- One firm has recovered approximately \$40 million in fees for settlements alone.

THE MULTIPLIER

One decision supercharged these claims.

- *Androckitis v. Virginia Mason Med. Ctr.*, 32 Wn. App. 2d 418 (2024), review denied (2025).
- A missed meal period pays three ways: the time worked, plus 30 minutes for the lost respite, plus doubling of both were willful.
- One employee, one missed 30-minute break at \$25 an hour, is \$100.
- Example: 500 hourly employees, one missed break a month, three years: 18,000 occurrences and \$900,000, before interest and fees.
 - Plaintiffs will argue that EVERY break was missed if not recorded.

THE MASTER KEY

Why a thin wage and hour claim is still worth filing.

- The break rules reach hourly, non-exempt employees, not bona fide exempt staff. WAC 296-126-002.
- A properly exempt employee has no meal or rest break claim at all.
- Plaintiffs expand the class by pleading misclassification. If it sticks, every exempt week becomes unrecorded, unwaived breaks.
- Meal and Rest break claims frequently included now on weak wrongful termination claims.
- Meal and rest break records are rare, whereas discipline may be well-documented.
 - Why fight a losing wrongful termination claim when a plaintiff can just claim a meal and rest break claim, and throw the termination claim on just for fun.

THE TRAP: PROVIDED, NOT ENSURED

The regulation and the case law do not say REMOTELY the same thing.

- WAC 296-126-092 says employees “shall be allowed” a meal period and “shall be allowed” a rest period. That is a duty to provide the opportunity.
- *Brady v. AutoZone*, 188 Wn.2d 576 (2017): a break missing from the record is a prima facie violation, and waiver is the employer’s burden to prove it was taken.
- No rule requires an employer to record that a break was offered or declined. The missing record is the case.
- Employees lose the choice the rule gave them. Employers lock terminals, force punches, and discipline missed pairs.
- Effectively strict liability for a missed (or undocumented) break, even though the law says nothing of the sort.

THE ALIBI THAT FAILS

Arbitration agreements can help, but the Courts are making it harder through poorly reasoned decisions:

- *Burnett v. Pagliacci Pizza*, 196 Wn.2d 38 (2020): no assent to a policy buried on page 18 of a 23-page handbook.
- *Oakley v. Domino's Pizza*, 23 Wn. App. 2d 218 (2022): the class action waiver was substantively unconscionable.
- Plaintiff's attorneys do not get paid as much, against Washington's public policy.
- *Sayaseng v. Geodis Logistics* (Div. I 2025)(unpublished): warehouse workers were FAA section 1 transportation workers, and the agreement fell.
- Struck down the arbitration language as well. (VERY questionable decision, up on review).
- Draft for severability: a stricken class waiver should not take individual arbitration down with it.

“I WANT TO TALK TO MY LAWYER.”

Where the battle lines are drawn.

- Arbitration still helps, but only if drafted for a court looking to strike it: stand-alone, separately signed, FAA choice of law, severable.
- Early CAFA assessment. Remove where the state venue is worse, and test Article III standing where the plaintiff shows no concrete injury.
- Certification, not the merits. Individualized waivers and unit-by-unit variation defeat predominance; attack extrapolated averages.
- Consider implementing agreements to reduce class size (Pick N’ Pull Settlement)
- Preserve the bona fide dispute defense to double damages from the first responsive pleading.
- Audit before the demand letter, upon receiving the personnel file request. It costs a fraction of litigation and fixes problems on your terms.

A PROACTIVE COMPLIANCE PROGRAM

Take the weapon off the board before the game starts.

- Employee handbook updates – be sure the handbook requires that:
 - all rest breaks and meal periods be taken unless otherwise agreed/waived,
 - reporting of any missed rest breaks and meal periods is mandatory,
 - discipline may result from failure to take or report missed breaks/meals, and
 - managers are prohibited from requiring employees work “off the clock.”
- Practice-versus-policy review — compare the handbook against what actually happens on the floor, using time records, scheduling data, and observation.
- Manager training refreshers — supervisors are the point of failure; retrain on breaks, interruptions, and off-the-clock work at intervals, not just onboarding.
- Waiver and documentation cleanup — individualized, written, revocable waivers; eliminate blanket or default waivers; retain the records.
- Neutral rounding audits on actual punch data; move to exact time capture, particularly in Oregon.

AUDIT CADENCE & REMEDIATION

Keep the case closed.

- Regular audits: daily or weekly supervisor timecard review, revisit meal-and-rest practices at least annually and immediately after any system, scheduling, or staffing change.
- Records and prevention: employee attestations, supervisor review and approval, safeguards against off-the-clock work, and system design built to state law, not just federal standards.
- Remediation: correct systemic issues, pay back pay promptly, fix root causes, and document every corrective action.
- Consider arbitration agreements with class action waiver – benefits beyond just the class action.

CASE CLOSED

The solution to the mystery.

- The suspects are common industry practitioners, not bad actors stealing wages: rounding, auto-deductions, undocumented breaks, employee choice, and blanket waivers.
- The rooms diverge: Washington's five-hour trigger, HB 2479; Oregon's shortened-meal-as-wages rule and Winn.
- The ballroom is where aggregation and penalties turn minutes into millions, and the filing data says the ballroom is full.
- New this cycle: pay transparency postings, misclassification as the gateway to break claims, and personnel file demands.
- The verdict: audit and fix before the demand letter, draft arbitration for severability, and fight at certification.



ROOM 4: **THE BONUS ROOM**

What about Idaho, Montana,
Alaska, and California?

HOW OTHER STATES PLAY THE GAME

Idaho: follows federal law, does not require meal/breaks for employees in most circumstances.

- Minimum wage of \$7.25/hour (with exceptions).

Montana: does not require meal/breaks for employees in most circumstances.

- Minimum wage of \$10.85/hour (with exceptions).

Alaska: does not require meal/breaks for employees in most circumstances,

- Minimum wage of \$13.00/hour.

California: requires 10-minute rest break every 4 hours, 30-minute meal period over 5 hours and second meal period over 12 hours,

- Minimum wage of at least \$16.90 but varies by industry/location.

PLAYERS

WHO?

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WHERE?

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