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WASHINGTON STATE
SUPREME COURT

NO. 93564-5

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SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE
SUPREME COURT

MICHAEL BRADY,

Plaintiff,

v.

AUTOZONE STORES, INC., and AUTOZONERS, LLC,

Defendants.

AMICUS CURIAE BRIEF OF THE
DEPARTMENT OF LABOR & INDUSTRIES

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I. INTRODUCTION

Meal breaks provide a critical hiatus from work for our state's employees. This is why the Department of Labor & Industries is committed to all employees receiving meal breaks. WAC 296-126-092 obligates an employer to provide such breaks. The only exception to this obligation is when the employee voluntarily and knowingly waives the meal break as shown by an agreement with the employer to waive the meal break.

To answer the certified questions: The rule is not a strict liability rule because an employee may waive a meal break. But it is the employer's burden to prove that an employee did so.

This interpretation furthers the underlying purpose of the meal break rule to allow respite from work. Placing responsibility on employers to "affirmatively promote meaningful break time" recognizes that employers possess the superior power position over employees and so must comply with the Industrial Welfare Act's mandate to ensure healthful working conditions by providing meal breaks.¹

II. IDENTITY AND INTEREST OF AMICUS

The Department administers and enforces "all laws respecting the employment and relating to the health, sanitary conditions, surroundings,

¹ See *Demetrio v. Sakuma Brothers Farms, Inc.*, 183 Wn.2d 649, 658, 355 P.3d 258 (2015) (quotation omitted); RCW 49.12.010.

hours of labor, and wages of employees employed in business and industry.” RCW 43.22.270(4). Consistent with this authority, the Department adopted WAC 296-126-092. So it has an interest in the Court’s interpretation of its administrative rule.

III. SPECIFIC ISSUES ADDRESSED BY AMICUS CURIAE

1. Is an employer strictly liable under WAC 296-126-092?²
2. If an employer is not strictly liable under WAC 296-126-092, does the employee carry the burden to prove that his or her employer did not permit the employee an opportunity to take a meaningful break as required by WAC 296-126-092?

IV. ARGUMENT

The Industrial Welfare Act demands that employers provide healthful working conditions to their employees. RCW 49.12.010 (“The welfare of the state of Washington demands that all employees be protected from conditions of labor which have a pernicious effect on their health.”); *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 858, 50 P.3d 246 (2002). This Court has recognized that “employers must affirmatively promote meaningful break time” to protect the health of employees. *Demetrio*, 183 Wn.2d at 658-59 (employers must provide rest breaks because they are critical to the “health and effectiveness of

² Despite the broad wording of this certified question, this case concerns WAC 296-126-092’s scope regarding meal breaks because, as the district court’s decision and parties’ briefing makes clear, rest break violations are not at issue.

employees.”); *White v. Salvation Army*, 118 Wn. App. 272, 283, 75 P.3d 990 (2003) (meal and rest breaks “provide relief to employees from ‘work or exertion.’”).

The rule places the obligation on the employer to provide, and prove that it provided, a meaningful meal break time because of its superior position over employees. *Cf. Tony & Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 302, 105 S. Ct. 1953, 1962, 85 L. Ed. 2d 278 (1985) (employees protected under Fair Labor Standards Act (FLSA) because employers have “superior bargaining power”). This rule furthers Washington’s “long and proud history of being a pioneer in the protection of employee rights.” *Drinkwitz v. Alliant Techsys, Inc.*, 140 Wn.2d 291, 300, 996 P.2d 582 (2000).

A. WAC 296-126-092 Does Not Impose a Strict Liability Rule Mandating That Employers Provide Meal Breaks in All Circumstances, but the Employer Has the Burden of Proving That It Provided Its Employees With Meaningful Meal Breaks

The first certified question is whether an employer is strictly liable under WAC 296-126-092. If this question means, “Is an employer automatically liable if a meal break is missed?” the answer to the question is “no.” Because an employee may waive a meal break if certain conditions are met, liability is not automatic. If the question means, “Is the employer required to give employees a meal break absent an express

waiver of that right?” the answer to the question is “yes.” As discussed below, under WAC 296-126-092 meal breaks are mandatory. An exception exists when an employee waives the meal break before it occurs and the employer agrees. *See, e.g.*, Administrative Policy ES.C.6 (Policy ES.C.6).

The second certified question asks:

If an employer is not strictly liable under WAC 296-126-092, does the employee carry the burden to prove that his or her employer did not permit the employee an opportunity to take a meaningful break as required by WAC 296-126-092?

The answer to this question is “no.” There is an affirmative obligation to provide meal breaks absent an express waiver. Because it is the employer’s obligation to provide a meal break, the employer also carries the burden to prove that there was a waiver.

B. Employers Must Affirmatively Promote Meaningful Meal Breaks

- 1. WAC 296-126-092 obligates employers to provide meal breaks and the fact that the rule allows employees to waive their rights to meal breaks does not change that obligation where no express waiver occurs**

As required by RCW 49.12.091, the Department sets standards for meal and rest breaks in WAC 296-126-092. Agency rules have the force and effect of law. *Wingert*, 146 Wn.2d at 848.

WAC 296-126-092 provides several interlocking requirements for

meal breaks and establishes when employees must be provided paid rest

breaks:

(1) Employees shall be allowed a meal period of at least thirty minutes which commences no less than two hours nor more than five hours from the beginning of the shift. Meal periods shall be on the employer's time when the employee is required by the employer to remain on duty on the premises or at a prescribed work site in the interest of the employer.

(2) No employee shall be required to work more than five consecutive hours without a meal period.

(3) Employees working three or more hours longer than a normal work day shall be allowed at least one thirty-minute meal period prior to or during the overtime period.

(4) Employees shall be allowed a rest period of not less than ten minutes, on the employer's time, for each four hours of working time. Rest periods shall be scheduled as near as possible to the midpoint of the work period. No employee shall be required to work more than three hours without a rest period.

(5) Where the nature of the work allows employees to take intermittent rest periods equivalent to ten minutes for each 4 hours worked, scheduled rest periods are not required.

For meal breaks, WAC 296-126-092(1) and (2) establish an affirmative duty to provide the breaks. *Pellino v. Brink's Inc.*, 164 Wn. App. 668, 688, 267 P.3d 383 (2011). "The plain language of WAC 296-126-092 imposes a mandatory obligation on the employer," as shown by the "shall be allowed" language in subsection 1 and the "shall be required" language in subsection 2. *Pellino*, 164 Wn. App. at 688. This language provides:

- Employees “shall be allowed” a meal period of least thirty minutes that begins “no less than two hours nor more than five hours from the beginning of the shift.” WAC 296-126-092(1).
- “No employee shall be required to work more than five consecutive hours without a meal period.” WAC 296-126-092(2).

The rule sets forth first an obligation to provide meal and rest breaks and then second, allows a waiver of the obligation for meal breaks. First, the directive that “employees shall be allowed a [meal or rest] period” obligates the employer to provide both meal breaks and rest breaks. *Compare* WAC 296-126-092(1) *with* (4). The courts have confirmed the mandatory obligation. *Wingert*, 146 Wn.2d at 848; *Pellino*, 164 Wn. App. at 687.

Second, the Department has long held the view that the employee under certain circumstances may waive a meal break, but may not waive a rest break. Policy ES.C.6. at 4; *Pellino*, 164 Wn. App. at 697. This distinction is shown in the rule language. After the rule sets the mandatory obligation to provide both meal and rest breaks, the rest break provision goes on to say that rest breaks “shall be scheduled as near as possible to the midpoint of the work period.” WAC 296-126-092(4). This “shall be scheduled” language makes it so the employee cannot waive a rest break. *See Demetrio*, 183 Wn.2d at 658. Additionally, meal breaks may be unpaid, while rest breaks are paid. From that, it makes sense for the

Department to allow waiver of the meal break for an employee to forego unpaid, non-working time.

The employee's ability to waive a meal break under certain circumstances does not change the employer's obligations to provide one where no express waiver of that right occurs. And although the employee can waive the timing of a meal break, he or she cannot waive the right to the time worked during the skipped break: if he or she does not take a lunch, then the employee must leave early (or other permutation). Or, if the employee does not leave early, then the employer must pay the employee overtime if the hours worked are over 40. RCW 49.46.130. This means that there are always mandatory obligations on the employer to provide early release or payment, placing the compliance burden on the employer.

While nothing in WAC 296-126-092(1) requires that the employer schedule a meal break for a specific time, it does require that the employer provide the meal break between the second and fifth working hour. The employer must make every effort to provide an uninterrupted meal break, but it can interrupt the meal break provided that the employee can resume

the meal break to finish out the 30 minutes. *See* WAC 296-126-092(1).³

This confirms that the rule obligates the employer to provide a meal break.

In arguing that the rule requires only that an employer not actively interfere with an employee's ability to take a meal break, AutoZone points out that "allowed" in WAC 296-126-092 means to permit. AutoZone Br. 24. It notes that this provides "direction to employers, but [does] not restrict the freedom of employees to take meal periods if and when they want." AutoZone Br. 24. The employer is simply wrong in asserting that WAC 296-126-092 does not mandate employers to require employees to take timely meal breaks absent an express waiver. AutoZone Br. 22.⁵ Washington courts have already determined that the meal break rule "imposes a mandatory obligation on the employer" and that employers must provide breaks rather than merely not "stand[] in the way." *See Pellino*, 164 Wn. App. at 687-88; *Demetrio*, 183 Wn.2d 649 at 658 (interpreting *Pellino* to mean that "employers must affirmatively promote meaningful break time.").

Although an employee may waive the meal break if certain conditions are met, the employee's hypothetical right to waive a break

³ "Complete" relief from duty is required when the employees have an unpaid meal period. *See* Policy ES.C.6 at 2. If the meal period is *unpaid*, then this time is wholly the employees' time. *See* WAC 296-126-092(1); *see also* WAC 296-126-002(8) (defining "hours worked"); Policy ES.C.6 at 3.

⁵ The employer uses the word "force" and "ensure" but presumably it really means "require." AutoZone Br. 22-23.

does not take away from the employer's obligations where no express waiver occurs. Any flexibility provided by the ability to waive the meal break inures to the employee's benefit; not the employer's. *Cf. Saucedo v. John Hancock Life & Health Ins. Co.*, 185 Wn.2d 171, 183-84, 369 P.3d 150 (2016) (interpreting remedial worker statute designed to prevent worker exploitation to benefit workers not contractors). The rule is not "permissive" as to employers because to accept the view that the meal break requirement creates only a permissive feature would mean that the agency intended when drafting the rule to make meal breaks purely voluntary. *Contra* AutoZone Br. 25.

But the rule evinces no such "permissive" intent. Indeed the rule uses the language "*shall* be allowed" and "*shall* be required," words that are not permissive in nature. And the court interprets remedial rules to further their intent, not frustrate them. *Demetrio*, 183 Wn. 2d at 656. RCW 49.12.010 directs the Department to "protect" employees; the Department would not implement such protection by creating only a voluntary rule. Such an interpretation would not "protect[] workers' rights" as required by this Court. *Demetrio*, 183 Wn.2d at 658; *see Wash. State Nurses Ass'n v. Sacred Heart Med. Center*, 175 Wn.2d 822, 832-34, 287 P.3d 516 (2012); *Wingert*, 146 Wn.2d at 852. Employers must provide meal breaks, because, as recognized by this Court, this "afford[s]"

[employees] healthy working conditions and adequate wages.” *Demetrio*, 183 Wn.2d at 657 (quoting *Wingert*, 146 Wn.2d at 852).

2. Employees may only waive the meal break through a knowing and intentional, prior agreement

The Department’s administrative policy provides carefully tailored guidance about when and how employees may waive meal breaks. Courts have long looked to administrative policy ES.C.6 for guidance. *See Wash. State Nurses Ass’n*, 175 Wn.2d at 831; *Pellino*, 164 Wn. App. at 697; *White*, 118 Wn. App. at 277; *Alvarez v. IBP, Inc.*, 339 F.3d 894, 913-14 (9th Cir. 2003). “An agency acting within the ambit of its administrative functions normally is best qualified to interpret its own rules, and its interpretation is entitled to considerable deference by the courts.” *D.W. Close Co. v. Dep’t of Labor & Indus.*, 143 Wn. App. 118, 129, 177 P.3d 143 (2008) (quotations omitted). The Department interprets the meal break rule to allow an employee to waive his or her right to meal breaks (or the other meal break requirements) by prior agreement:

8. May an employee waive the meal period?

Employees may choose to waive the meal period requirements. The regulation states employees “shall be allowed,” and “no employee shall be required to work more than five hours without a meal period.” The department interprets this to mean that an employer may not require more than five consecutive hours of work and must allow a 30-minute meal period when employees work five hours or longer.

If an employee wishes to waive that meal period, the employer may agree to it. The employee may at any time request the meal period. While it is not required, the department recommends obtaining a written request from the employee(s) who chooses to waive the meal period.

If, at some later date, the employee(s) wishes to receive a meal period, any agreement would no longer be in effect. Employees must still receive a rest period of at least ten minutes for each four hours of work.

An employer can refuse to allow the employee to waive the meal period and require that an employee take a meal period.

Policy ES.C.6 at 4. The Department website further explains:

Can a worker choose to give up his or her meal period?

Workers may give up their meal period if they prefer to work through it *and if the employer agrees*.

Business owners please note: The Department of Labor & Industries recommends that you get a written statement from workers who want to give up their meal periods.

Rest & Meal Periods: What are the Rest Break and Meal Period Requirements for Adult Workers,

<http://www.lni.wa.gov/WorkplaceRights/Wages/HoursBreaks/Breaks/>

(emphasis added).⁶

The Department's policy regarding waivers furthers two important principles. First, it recognizes that the rule affirmatively obligates the

⁶ Consistent with the Department's interpretation, if an employee may choose to waive a meal break entirely, an employee may also waive the other "meal break requirements." See Policy ES.C.6 at 4.

employer to provide meal breaks absent an express waiver. *Pellino*, 164 Wn. App. at 687; WAC 296-126-092(1), (2). And second, the policy affirms the waiver must be an “intentional and voluntary relinquishment of a known right” in order for it to be a valid waiver. *Pellino*, 164 Wn. App. at 696-97. Thus the Department allows an employee to *request* a waiver of the meal break requirement, but the Department expects the request to occur before the meal break, and the employer must decide whether to agree to that request. Policy ES.C.6 at 4. An employer must consent because the employer is the one obligated to ensure its own compliance with the rule.⁷ The employer cannot discharge its duty to provide meal breaks by simply paying the employee for the time. *Pellino*, 164 Wn. App. at 692.

The voluntary and intentional requirements of the rule are also confirmed by the unilateral nature of the waiver request recognized in the waiver policy. The policy solely benefits the worker as shown by an employee’s ability to unilaterally rescind a meal-break waiver at any time: “[i]f an employee wishes to receive a meal period, any agreement would no longer be in effect.” Policy ES.C.6 at 4. AutoZone suggests the relevant

⁷ An employer must provide a 30-minute uninterrupted meal break and if a 30-minute uninterrupted meal break does not occur, it is obligated to pay the employee for the interrupted meal break and allow an employee to continue the meal period “until the employee has received 30 minutes total of mealtime.” Policy ES.C.6 at 3-4; *see also Alvarez*, 339 F.3d at 913.

public policy here is to create employee choice and flexibility in the meal breaks. *See* AutoZone Br. 46-48. Although flexibility is a side-benefit of the Department's policy because it allows employees to work through lunch so that they may leave early (or other permutations), it still does not change that the default is to have a meal break.

Pellino's recognition that an employee may only make a knowing and voluntary waiver does not allow for a rule that treats all missed meal breaks as implied waivers. 164 Wn. App. at 697. Just missing a meal break is not a knowing and voluntary waiver. The district court's conclusion that when an employee does not take a meal break, this means the employee impliedly waived the requirement, contravenes the rule's plain language and the rule drafters' intent. Allowing employers to claim "implied waiver" every time an employee does not receive a meal period within the required timeframe is fraught with potential for abuse.

This is because a rule of law that treats any missed meal break as an implied waiver would reduce an employer's incentive to ensure that its employees take regular meal breaks and could even discourage employees from taking their meal breaks. Indeed, it would transform evidence that an employer failed to provide its employees with meal breaks into evidence that those employees waived their rights. An employee in a busy shop may choose to skip a meal break without prior approval rather than risk the

employer's retribution. So the Department protects these employees as required by RCW 49.12.010 by setting forth the conditions under which a knowing waiver may occur: a prior request that is approved by the employer, preferably in writing. Policy ES.C.6 at 4. Any other interpretation would impermissibly create a culture of noncompliance. *See Demetrio*, 183 Wn.2d at 658. And it would undermine the Legislature's intent that employees receive healthful working conditions. Consistent with that intent, the Department places the obligation to provide meal breaks on the employer as it is the party in the best position to ensure that a workplace culture that provides meal breaks exists.⁸

C. The Employer Has the Burden to Establish That a Worker Waived His or Her Timely Meal Break

1. The employer has the burden to show that the affirmative defense applies because it manages workplace compliance with all wage and hour requirements

⁸ To the extent that there is any ambiguity over whether the regulation permits an implied waiver, this ambiguity must be resolved in favor of a liberal interpretation to benefit the statutory beneficiaries of this remedial provision. *E.g.*, *Demetrio*, 183 Wn. 2d at 656. One unpublished federal district court decision, *Eisenhauer v. Rite Aid Headquarters, Corp.*, 2006 WL 1375064 (W.D. Wash. 2006), goes against this liberal construction by endorsing implied waiver. But it pre-dates rulings in *Demetrio*, *Washington State Nurses Association*, and *Pellino*, and none of its proffered reasons for waiver pass muster under these decisions. Under the Department policy, the employer cannot show waiver based on the notion that the worker implicitly waived his right to timely meal breaks when he "routinely had other employees bring him lunch from outside the store," that as a pharmacy manager he knew about meal break requirements, or that "he was not ever told not to take these breaks." *Id.* at *2.

WAC 296-126-092(1) is not a strict liability rule because an employee may waive the meal break requirement under certain circumstances. But the waiver provision does not shift the burden of proof to the employee to establish that he or she did not waive his or her meal break. The employer “bears the burden of proof on the affirmative defense of waiver.” *Pellino*, 164 Wn. App. at 696. This is consistent with the Department’s rule and policy where WAC 296-126-092 sets forth an affirmative obligation to provide meal breaks, with waiver possible only when there is a prior agreement between the employer and employee to waive meal break requirements. The meal break provision inures to the benefit of the employee, and when a meal break is missed it is not the employee who must justify its absence. Instead, responsibility for ensuring that meal breaks occur ultimately rests with the employer. *Demetrio*, 183 Wn.2d at 658 (affirmative obligation to provide breaks); *see also Pellino*, 164 Wn. App. at 687-88 (same).

The district court believed that placing the burden on the employer would require the employer to “police” the meal breaks and “force” employees to take such breaks. Order Denying Class Certification, at 5. But the district court missed the point—the rule ensures that employees are not discouraged from taking breaks, not to ensure that they are not pressured into taking them. There is always a tension in remedial wage

and hour legislation as to who has the burden to ensure provision of the remedial requirement. But here the Legislature resolved this issue in favor of “protect[ing] [employees] from conditions of labor which have a pernicious effect on their health.” RCW 49.12.010. The Department has taken this mandate seriously in its rule and policy by placing the burden on the employer. *Accord Pellino*, 164 Wn. App. at 687-88 (Employers must provide breaks rather than merely not “stand[] in the way.”).

Pellino’s holding that the employer bears the burden of proving the affirmative defense of waiver is well grounded in wage and hour principles for three reasons. *See Pellino*, 164 Wn. App. at 696. First, employers are responsible to pay their employees and to keep records about their hours worked. RCW 49.46.020 (employer must pay employees at least the minimum wage); RCW 49.48.010 (employer must pay final wages); RCW 49.52.050 (employer must pay agreed wages); RCW 49.46.040 (employer must keep records of wages, hours, and other conditions and practices of employment); RCW 49.46.070 (same); WAC 296-128-010 (same). As the party that is responsible for keeping records, it makes sense for an employer to be responsible to track waivers, which ideally should be in writing. Additionally, the employer needs to make sure that the employee is paid properly; that duty cannot be delegated to the employee. If an employee properly waives a meal break, the employer

must make sure there is no deduction from pay taken for the meal period the employee has chosen not to take and that overtime is paid if the employee then works more than 40 hours in a week. *See* RCW 49.46.130. An employer's obligations to keep records and ensure payment means that it is responsible for managing the work place in wage and hour matters, and with that comes the burden to show that its employees waived a break.

Second, this Court has long held that the burden of showing an exception to a remedial wage and hour statute is on the employer: “[e]xemptions from remedial legislation . . . are narrowly construed and applied only to situations which are plainly and unmistakably consistent with the terms and spirit of the legislation.” *Drinkwitz*, 140 Wn.2d at 301 (interpreting Minimum Wage Act); *see also Corning Glass Works v. Brennan*, 417 U.S. 188, 196-97, 94 S. Ct. 2223, 41 L. Ed. 2d 1 (1974) (“[T]he general rule [is] that the application of an exemption under the Fair Labor Standards Act is a matter of affirmative defense on which the employer has the burden of proof.”). If an employer seeks an exception from the rule that it is affirmatively obligated to provide a meal break, it bears the burden to prove it.

Third, other wage and hour principles support the view that waiver is an affirmative defense that must be proved by the employer. In the seminal case *Anderson v. Mt. Clemens Pottery Company*, 328 U.S. 680,

687-88, 66 S. Ct. 1187, 90 L. Ed. 1515 (1946), the Supreme Court placed a significant burden on employers in FLSA cases: namely, that it is the employer's obligation to keep records about employees, and from this obligation comes the burden to show compliance with FLSA requirements upon the employee's initial showing of a wage and hour violation. *See also Pugh v. Evergreen Hosp. Med. Ctr.*, 177 Wn. App. 363, 368, 312 P.3d 665 (2013) (following *Mt. Clemens*); *MacSuga v. Cy. of Spokane*, 97 Wn. App. 435, 445, 983 P.2d 1167 (1999) (same). Under this standard, the lack of documentary evidence is not held against the employee because documentation is the employer's duty. *Mt. Clemens*, 328 U.S. at 687. The Court adopted this rule to reflect FLSA's remedial nature and implement the "great public policy which it embodies" and because lack of evidence is within the control of the employer. *Id.* at 687.

Consistent with *Mt. Clemens*, the employer should be tasked with keeping track of waivers and proving they exist. The responsibilities that flow from being an employer, which are confirmed by case law and the statutes regarding payment and payroll records, show that it is the employer—not the employee—who should have to prove that a waiver occurred.

2. Once an employee shows that he or she has missed a meal break, then the employer must show a proper waiver

The reason why the second certified question is answered “no” is because a positive answer would shift the burden on to the employee to explain the employer’s noncompliance. But to meet his or her prima facie case, an employee must only provide evidence that he or she did not receive a timely meal break. The burden then shifts to the employer to rebut this by showing waiver. The employer must prove the affirmative defense that that the employee waived his or her right to a timely meal break by requesting a waiver and that the employer agreed to one—the employer must show evidence of a “knowing and voluntary” waiver. The employer satisfies its defense by following the Department’s advice to put any waiver agreement in writing. If the employer shows no written agreement, then it may show waiver through credible testimony. The employer, who must track hours worked as required by statute and rule, is in the best position to refute an employee’s claim of a violation substantiated by credible evidence. *See* RCW 49.46.040, .070; WAC 296-128-010.

Holding an employer to its burden to establish waiver once an employee has presented prima facie evidence of a meal break violation

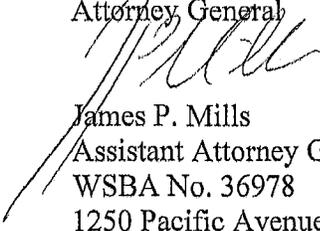
serves the rule's remedial purposes and recognizes the employer's crucial role in creating a healthful workplace.

V. CONCLUSION

WAC 296-126-092 creates mandatory obligations for employers. It undermines the rule to construe it to mean that if the employee does not take the meal break, this means that the employee must have waived the right to take one. The rule's fundamental purpose is to provide meaningful meal-break time consistent with the Industrial Welfare Act's mandate to protect employee health. To further these policies, it is the employer's responsibility to show compliance with WAC 296-126-092 as the one enjoying the superior position. The Department asks this Court to answer both questions "no," and in doing so: first, reaffirm that employers must affirmatively promote meal breaks; and, second, hold employers to their burden to establish that an employee has waived his or her meal break.

RESPECTFULLY SUBMITTED this 27th day of January, 2017.

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The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, hereby certifies that the document to which this proof of service is attached, Amicus Curiae Brief of the Department Labor & Industries and Motion for Leave to File Amicus Curiae Brief on Behalf of the Department of Labor & Industries, State of Washington, were delivered as follows:

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Attached please find the Department's Motion for Leave to File Amicus Curiae Brief on Behalf of the Department of Labor & Industries, State of Washington and Amicus Curiae Brief of the Department of Labor & Industries in the matter of Michael Brady v. Autozone Stores, Inc., and Autozoners, LLC, Case No. 93564-5 for James Mills, (253) 597-3896, Bar No. 36978.

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