

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* S.B.C. 1995, C. 38

- by -

Aarm Dental Group and Employees  
("Aarm")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 96/320

**DATE OF DECISION:** May 4, 2001

## DECISION

### OVERVIEW

This is an appeal by Aarm Dental Group and its employees (“Aarm”) under Section 112 of the *Employment Standards Act* (the “Act”) against a Determination Letter issued on April 30, 1996 by a delegate of the Director of Employment Standards. In this appeal Aarm claims their request for a variance of Section 32 of the *Act* (Meal breaks) should not have been denied.

The Director’s delegate determined, following her investigation, that the request for a variance should be denied as there is no provision in the *Act* for such a variance.

### ISSUE TO BE DECIDED

This issue to be decided in this appeal is whether the decision of the Director’s delegate is correct.

### FACTS

The Determination Letter issued by the Director’s delegate states the following:

#### Lunch Breaks

Section 32 of the *Employment Standards Act* requires that employees must be given at least a 1/2 hour lunch break at least every 5 consecutive hours. Should the employer require an employee to work during a meal break, this time must be considered time worked by the employee. Please refer to the following excerpt from the *Employment Standards Act*.

#### Meal breaks

32. (1) An employer must ensure
  - (a) that no employee works more than 5 consecutive hours without a meal break, and
  - (b) that each meal break lasts at least a 1/2 hour.
- (2) An employer who requires an employee to be available for work during a meal break must count the meal break as time worked by the employee.

Please also note Part 9, Variances. This part of the *Employment Standards Act* sets out the areas that will be considered for purposes of a variance application by the Director, Employment Standards.

Section 32 Meal Breaks, is not one of the provisions in the *Employment Standards Act* where a variance application can be put forward, therefore, this request must be denied.

In this appeal Aarm wants employees to have a lunch break after six hours of work and not five. This would allow them to deliver services in a manner that would benefit patients and team members.

## **ANALYSIS**

Section 73 of the *Act* gives the Director of Employment Standards the power to grant variances under Section 72 of the *Act*.

Section 72 of the *Act* reads as follows:

An employer and any of the employer's employees may, in accordance with the regulations, join in a written application to the director for a variance of any of the following:

- (a) a time period specified in the definition of "temporary layoff";
- (b) section 17 (1) (paydays);
- (c) section 25 (special clothing);
- (d) section 31 (3) (notice of a change in shift);
- (e) section 34 (minimum daily hours);
- (f) section 35 (maximum hours of work);
- (g) section 36 (hours free from work);
- (h) section 40 (overtime wages for employees not on a flexible work schedule);
- (i) section 64 (notice and termination pay requirements for group terminations).

There is no provision under Section 72 of the *Act* which would allow the Director of Employment Standards to consider an application for a variance of Section 32 (Meal breaks) of the *Act*. Nor is there any other provision under the *Act* or the *Employment Standards Regulation* which would allow a variance of Section 32 of the *Act*. Regardless of the reason for such an application, the *Act* simply does not allow for meal breaks to be varied from that which is set out in the *Act*.

I conclude, therefore, the Director's delegate has not erred in her decision and this appeal must be dismissed

**ORDER**

I order, pursuant to Section 115 of the *Act*, that the Determination Letter issued on April 30, 1996 be confirmed.

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**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**

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