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MEHDI BELGADA ET AL. *v.* HY'S LIVERY SERVICE, INC., ET AL.
(AC 44659)

Cradle, Suarez and Seeley, Js.

Syllabus

The plaintiff chauffeurs sought to recover damages from the defendants, a livery service and its owners, claiming that the plaintiffs' one hour meal breaks constituted compensable work time under minimum wage law (§ 31-76b (2) (A)) and that the defendants had improperly deducted the meal breaks from their pay. The defendants had informed the plaintiffs in a memorandum that they were implementing a new meal break policy pursuant to the applicable federal regulation (§ 29 C.F.R. 785.19), which required that employees must be completely relieved from duty for purposes of eating regular meals. Under the defendants' policy, chauffeurs would be given a daily one hour, unpaid meal break during which they were to remain within a two mile radius of their next pickup location. The defendants moved for summary judgment, claiming that the meal breaks were not compensable because the plaintiffs spent those breaks engaged in activities that were for their own benefit under the predominant benefit test adopted by the majority of federal circuit courts of appeals, which examines whether activities employees perform during meal breaks are predominantly for the benefit of the employer. The plaintiffs objected and moved for partial summary judgment, claiming that they were working during their meal breaks under the plain language of § 31-76b (2) (A) and that the meal break policy constituted an enforceable contract between the parties that incorporated § 29 C.F.R. 785.19 and required the defendants to completely relieve them from duty during meal breaks. The trial court granted the defendants' motion for summary judgment, concluding that the meal break policy did not constitute a contract between the parties and that the breaks were not compensable work time because the plaintiffs had used them predominantly for their own benefit. On appeal to this court, the plaintiffs claimed, inter alia, that their meal breaks constituted hours worked under the plain language of § 31-76b (2) (A) because they were required to guard their limousines during meal breaks and remain within two miles of their next pickup location. *Held*:

1. This court agreed with the trial court's determination that the defendants' meal break policy did not give rise to an enforceable contract between the parties, and that, even if it did, it would be governed by the predominant benefit test, under which the trial court properly found that the plaintiffs used their meal breaks predominantly for their own benefit, rather than that of the defendants; the plaintiffs' contention that the defendants had incorporated into the written meal break policy the completely relieved from duty test under 29 C.F.R. § 785.19 was unconvincing, that test having been rejected by most federal courts of appeals in favor of the more flexible predominant benefit test.
2. The plaintiffs could not prevail on their claim that the trial court improperly applied the predominant benefit test in determining that their meal breaks were not compensable under § 31-76b (2) (A): this court concluded that § 31-76b (2) (A) was ambiguous because it did not define work and was persuaded that the predominant benefit test should apply to the plaintiffs' claim, given that the legislative purpose in enacting § 31-76b (2) (A) was to make Connecticut wage law coextensive with federal overtime law; moreover, this court was not convinced by the plaintiffs' assertion that their meal breaks were "hours worked" under the plain language of § 31-76b (2) (A) because they were required to guard their limousines and remain within two miles of their next pickup location, which, they claimed, constituted their "prescribed work place" under the statute, as a meal break is not an hour worked under § 31-76b (2) (A) unless the employee "is required or permitted to work" during that break; furthermore, the plaintiffs' contention that they engaged in "work" under § 31-76b (2) (A) whenever they were at their prescribed workplace, regardless of whether they were on a meal break, would

render the meal break exclusion superfluous.

3. The undisputed evidence in the record established that there was no genuine issue of material fact that the plaintiffs' meal breaks were predominantly for their own benefit and, thus, were not compensable as a matter of law: excerpts from the plaintiffs' depositions showed that they were able to go to malls, convenience stores, restaurants and offtrack betting during meal breaks as well as use the Internet on their phones and converse with other chauffeurs in each other's vehicles; moreover, the plaintiffs provided no evidence that they were guarding their limousines during meal breaks, and the record showed that other policies the defendants employed regarding care for and damage to their vehicles were not strictly enforced such that the plaintiffs were prevented, as they claimed, from using their meal breaks for their own purposes; furthermore, activities the plaintiffs were expected to engage in during meal breaks that did benefit the defendants, such as conversing with dispatchers about upcoming trips, cleaning the limousines and getting gas, did not transform the meal breaks into compensable time, and any burdens those activities placed on the plaintiffs were too minimal to conclude that their meal breaks predominantly benefited the defendants.

Argued September 12, 2022—officially released June 20, 2023

Procedural History

Action to recover damages for allegedly unpaid wages, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Ozalis*, *J.*, granted the plaintiffs' motion for class certification; thereafter, the case was transferred to the judicial district of Hartford, Complex Litigation Docket, where the action was withdrawn as to the plaintiff Benito Hernandez et al.; subsequently, the court, *Moukawsher*, *J.*, granted the defendants' motion for summary judgment and rendered judgment thereon, from which the plaintiffs appealed to this court. *Affirmed*.

Michael T. Petela, with whom was *Richard E. Hayber*, for the appellants (named plaintiff et al.).

Adam J. Lyke, with whom was *Glenn A. Duhl*, for the appellees (defendants).

Opinion

SEELEY, J. The plaintiffs, a group of chauffeurs who brought this class action[1] complaint seeking unpaid wages, appeal from the summary judgment rendered by the trial court in favor of the defendants, Hy's Livery Service, Inc. (Hy's); Robert L. Levine, Hy's president; and Mathew Levine, Hy's vice president. On appeal, the plaintiffs Mehdi Belgada, Hormoz Akhundzadeh and Daniel Dziekan, as representatives of the class, set forth three arguments in support of their claim that the court improperly resolved the legal issue, namely, whether the plaintiffs' meal breaks were not compensable time and, consequently, improperly rendered summary judgment for the defendants. We are not persuaded and, accordingly, affirm the judgment of the court.[2]

The record before the court, viewed in the light most favorable to the plaintiffs as the nonmoving party, reveals the following facts and procedural history. Hy's is a limousine service provider owned and operated by the Levines. Hy's employs chauffeurs, including the plaintiffs, to transport its clients to and from destinations, oftentimes airports, in Connecticut and the New York area. Hy's also employs accounting personnel to track the chauffeurs' hours and calculate their pay, as well as dispatchers who act as liaisons for the chauffeurs while they are on duty.

At all relevant times, a typical workday for a chauffeur employed by Hy's was as follows: the chauffeur would report to Hy's at the start of his or her shift, pick up and inspect a limousine, and spend the remainder of the shift transporting passengers at the direction of dispatch—oftentimes with lags between their trips ranging in duration, other times back-to-back—and then return to Hy's to drop off the vehicle and clock out. The dispatchers communicated with the plaintiffs throughout the day by email, telephone, and through an application on the plaintiffs' phones called the "Livery Coach App."

Between March, 2015, and March, 2016, the Wage and Hour Division of the United States Department of Labor investigated Hy's in response to employee complaints surrounding uncompensated preshift hours and the automatic deducting of a one hour meal break.[3] While this investigation was ongoing, Hy's chauffeur manager, Steven Zubrinsky, sent an email to the plaintiffs on December 30, 2015, and notified them of a new meal break policy that would soon take effect. The new policy stated: "As of the pay period beginning January 3, 2016, all chauffeurs will be given a [one] hour, unpaid meal break every day, while on the road, at a time decided by dispatch pursuant to the [United States] Department of Labor, Code of Federal Regulations, regulation [29 U.S.C. §] 785.19 [2016].[4] You may take that break anywhere within a radius of [two] miles from

your next pick up. If for any reason, due to scheduling or length of shift, you did not get that break, and it was deducted, please let me know and it will be adjusted. Also, if you have any questions, please come and see me." (Footnote added.)

Following the implementation of the new policy, Hy's accounting department would review the plaintiffs' schedules to determine if they had sufficient time for an hour-long meal break during each shift that exceeded seven and one-half hours, and, if they did, then, in the absence of any notification that the plaintiffs had to work during that time, the accounting department was directed to record a meal break. Zubrinsky explained this process in his deposition testimony: "A chauffeur finishes one trip and the dispatcher gives him another trip. Now, if that trip is, you know, in a half hour or an hour, then there's no time . . . for you to take your break. . . . [I]f you dropped off at [10 a.m.] and your next trip is not until [3 p.m.], then there's time. So, it all depends on which trip the dispatcher gives them." The accounting department would arbitrarily choose one of the lag time hours to designate as the meal break. For example, in the scenario posed by Zubrinsky, an employee in the accounting department would have designated one of the hours between 10 a.m. and 3 p.m. as the chauffeur's break and then adjusted the plaintiffs' time sheets to reflect an hour-long meal break.

If the plaintiffs were unable to take a meal break but saw the meal break deduction on their time sheets, then, pursuant to the meal break policy, they were to notify management so that it could be corrected. Zubrinsky explained, "[i]f a chauffeur brought it to my attention that . . . the hour was deducted and he didn't feel that it should have been deducted, he would come to me. If he came to me, I would analyze it, and if I determined that he should [not] have gotten the . . . deduction, then I direct [an employee] in accounting to give him back the hour. There [are] gray areas here. If it was even close, I always erred on the side of the chauffeur." Beginning in August, 2017, Hy's permitted the plaintiffs to self-record their meal breaks on their time sheets using the Livery Coach app.

The plaintiffs first filed suit in 2018 in the United States District Court for the District of Connecticut and alleged that Hy's had violated state and federal law by, inter alia, depriving its chauffeurs of bona fide meal breaks, yet automatically deducting one hour per day from their work time. See *Belgada* v. *Hy's Livery Service, Inc.*, Docket No. 3:18-cv-177 (VAB), 2019 WL 632283 (D. Conn. February 14, 2019). While the case was pending, however, the United States Court of Appeals for the Second Circuit issued a decision in which it held that limousine drivers fall within the taxicab exemption of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq., "which exempts from the over-

time requirement 'any driver employed by an employer engaged in the business of operating taxicabs.' " *Munoz-Gonzalez* v. *D.L.C. Limousine Servic*e, *Inc.*, 904 F.3d 208, 212 (2d Cir. 2018). Consequently, the plaintiffs moved for voluntary dismissal of the FLSA claims with prejudice and dismissal of the state law claims without prejudice, which the District Court granted on February 14, 2019. See *Belgada* v. *Hy's Livery Service, Inc.*, supra, 2019 WL 632283, *8.

Because Connecticut law has a narrower taxicab exemption than federal law that has not been applied to chauffeurs, the plaintiffs filed the present action in the Superior Court on April 2, 2019, claiming only a violation of state law.[5] Specifically, the plaintiffs alleged that Hy's had violated General Statutes § 31-58 et seq., the Connecticut Minimum Wage Act (minimum wage act), by improperly deducting the plaintiffs' pay for their meal breaks. Following one year of discovery, the plaintiffs filed a motion for class certification, which was granted by the court, *Ozalis*, *J.*, on April 20, 2020.[6] See *Belgada* v. *Hy's Livery Service*, *Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-19-6090694 (April 20, 2020).

On September 24, 2020, the defendants filed a motion for summary judgment. The defendants argued that they were entitled to summary judgment because, based on the undisputed facts, the plaintiffs did not perform compensable work during their meal breaks. Specifically, the defendants argued that the meal break time is not compensable because the appropriate test for what constitutes compensable "work" is the predominant benefit test; see part I of this opinion; and, in the present case, the plaintiffs spent their meal breaks engaged in activities that were predominantly for their own benefit.[7] The plaintiffs objected to the defendants' motion and moved for partial summary judgment based on their "contract theory"[8] of liability, pursuant to which Hy's policy as to meal breaks was an enforceable contract that the defendants had breached.

On April 13, 2021, the court, *Moukawsher*, *J.*, granted the defendants' motion for summary judgment. After considering the parties' arguments, the court concluded that the plaintiffs' meal breaks did not constitute compensable time. This appeal followed. On appeal, the plaintiffs set forth three arguments in support of their claim that their meal breaks were compensable time, and, therefore, the court improperly granted the defendants' motion for summary judgment. First, the plaintiffs assert their "contract theory," that is, that Hy's meal break policy created an enforceable contract that required the defendants to abide by 29 C.F.R. § 785.19, which they posit invokes the completely relieved from duty test. See part I of this opinion. Second, the plaintiffs claim that they were "working" during their meal breaks pursuant to the plain language of General Statutes § 31-

76b (2) (A),[9] and the court erred by applying the predominant benefit test to its analysis under the statute. Finally, the plaintiffs argue that, even if it was proper for the court to apply the predominant benefit test, a genuine issue of material fact exists as to whether the meal breaks were for the predominant benefit of Hy's. We disagree. We will address each argument and set forth additional facts therein, but first, we briefly discuss the applicable standard of review.

"Our standard of review with respect to a court's ruling on a motion for summary judgment is well settled. Practice Book § [17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . .

"[I]ssue-finding, rather than issue-determination, is the key to the procedure. . . . [T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment. . . . [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist. . . . Our review of the decision to grant a motion for summary judgment is plenary. . . . We therefore must decide whether the court's conclusions were legally and logically correct and find support in the record. . . . A material fact . . . [is] a fact which will make a difference in the result of the case." (Citation omitted; internal quotation marks omitted.) *Adams* v. *Aircraft Spruce & Specialty Co.*, 215 Conn. App. 428, 440–41, 283 A.3d 42, cert. denied, 345 Conn. 970, 286 A.3d 448 (2022).

I

We first address the plaintiffs' "contract theory." The plaintiffs argue that the court erred in granting the defendants' motion for summary judgment because there is a genuine issue of material fact as to whether the defendants' December 30, 2015 meal break policy constituted an enforceable contract under which the defendants were obligated to "completely relieve" the plaintiffs of their duties during their meal breaks. They further contend that there is a genuine issue of material fact as to whether the defendants failed to relieve them completely during their meal breaks because they were, among other things, required to act as de facto security guards of their limousines. We disagree.

The December 30, 2015 meal break policy provides in relevant part that "all chauffeurs will be given a [one] hour, unpaid meal break every day . . . pursuant to the [United States] Department of Labor, Code of Federal Regulations, regulation [§] 785.19." Section 785.19 (a) provides that "[b]ona fide meal periods are not worktime" and that "[t]he employee must be *completely relieved from duty* for the purposes of eating regular meals." (Emphasis added.) In light of this language in 29 C.F.R. § 785.19 (a), at least one federal court of appeals has applied the completely relieved from duty test to determine whether a break is compensable work. See *Brennan* v. *Elmer's Disposal Service, Inc.*, 510 F.2d 84, 88 (9th Cir. 1975). This test requires that an employee be relieved of *all* duties, active or inactive, while on their meal break, otherwise the break is not considered to be bona fide. Id. ("[a]n employee cannot be docked for lunch breaks during which he is required to continue with *any* duties related to his work" (emphasis added)). The majority of the federal courts of appeals, however, including the Second Circuit, have adopted the predominant benefit test, which courts have recognized as a more flexible approach. See generally *Babcock* v. *Butler County*, 806 F.3d 153, 156 (3d Cir. 2015); *Hartsell* v. *Dr. Pepper Bottling Co. of Texas*, 207 F.3d 269, 274 (5th Cir. 2000); *Roy* v. *County of Lexington*, 141 F.3d 533, 544–46 (4th Cir. 1998); *Reich* v. *Southern New England Telecommunications Corp.*, 121 F.3d 58, 64–65 (2d Cir. 1997); *Henson* v. *Pulaski County Sheriff Dept.*, 6 F.3d 531, 534 (8th Cir. 1993); *Alexander* v. *Chicago*, 994 F.2d 333, 337 (7th Cir. 1993).[10] The predominant benefit test examines whether the employee is performing activities during his or her meal break that are predominantly for the benefit of the employer. See *Reich* v. *Southern New England Telecommunications Corp.*, supra, 64.

The plaintiffs argue that the defendants, by citing 29 C.F.R. § 785.19 in their meal break policy, were incorporating the completely relieved from duty test into their contract. The plaintiffs specifically rely on this court's decision in *Greene* v. *Waterbury*, 126 Conn. App. 746, 12 A.3d 623 (2011), in which we stated that, "[w]hen a contract expressly incorporates a statutory enactment by reference, that enactment becomes part of a contract for the indicated purposes *just as though the words of that enactment were set out in full in the contract*." (Emphasis in original; internal quotation marks omitted.) Id., 751. The defendants contend that the policy was not a contract, and that, even if it were, the predominant benefit test would govern the analysis based on the Second Circuit's decision in *Reich* v. *Southern New England Telecommunications Corp.*, supra, 121 F.3d 58. In *Reich*, the Second Circuit rejected the completely relieved from duty test that some jurisdictions had applied to 29 C.F.R. § 785.19 and, instead, applied the predominant benefit test. Id., 63–65; see id., 65 ("[i]n our view, this predominant benefit standard sensibly

integrates developing case law with the regulations' language and purpose . . . and more importantly, with the language of the FLSA itself" (citation omitted; internal quotation marks omitted.)).

In the present case, the court agreed with the defendants that the meal break policy was not a contract.[11] It further concluded that, even if the policy were a contract, it would be governed by the predominant benefit test, not the completely relieved from duty test, pursuant to *Reich*. It determined that the plaintiffs' meal breaks were predominantly for their own benefit, and "[t]here is no rational way" to find otherwise.[12]

We agree with the defendants and the court that, even if we were to assume, arguendo, that the meal break policy was an enforceable contract, the predominant benefit test governs our analysis. As we previously stated, the majority of the federal courts of appeals have adopted the predominant benefit test in order to interpret 29 C.F.R. § 785.19, including the Second Circuit, which has concluded that "§ 785.19 *must* be interpreted to require compensation for a meal break during which a worker performs activities predominantly for the benefit of the employer."[13] (Emphasis added.) *Reich* v. *Southern New England Telecommunications Corp.*, supra, 121 F.3d 64. The plaintiffs' argument that, because the defendants included 29 C.F.R. § 785.19 in their policy they were therefore intending to incorporate the minority test despite its rejection by most courts, including the Second Circuit, is unconvincing. Accordingly, we agree with the trial court that, even if the policy were a contract, it would be governed by the predominant benefit test.[14]

II

The plaintiffs next claim that the court erred by applying the predominant benefit test in its analysis of whether the plaintiffs' meal breaks were compensable pursuant to § 31-76b (2) (A). The plaintiffs argue that the court's analysis should have started and ended with the text of § 31-76b (2) (A), which defines "hours worked" as "all time during which an employee is required by the employer to be on the employer's premises or to be on duty, or to be at the prescribed work place, and all time during which an employee is employed or permitted to work, whether or not required to do so, provided time allowed for meals shall be excluded unless the employee is required or permitted to work." They argue that, because they were required to "guard" their limousines and remain within two miles of their next pickup during their meal breaks, they therefore were required to remain at their "prescribed work place" and, consequently, were "working." The defendants maintain that this argument by the plaintiffs, if accepted, would render the meal break exclusion of § 31-76b (2) (A) superfluous. We agree with the defendants. We further conclude that § 31-76b (2) (A) is

ambiguous because it excludes meal breaks "unless the employee is required or permitted to work" during the break, yet it does not define what constitutes "work." Because we conclude that it is ambiguous, we look to extratextual evidence for interpretive guidance and, in doing so, are persuaded that the proper approach in discerning what constitutes "work" is that taken by the federal courts of appeals, i.e., the application of the predominant benefit test. Accordingly, we reject the plaintiffs' claim that the court improperly applied the predominant benefit test to its § 31-76b (2) (A) analysis.

Although the plaintiffs did not assert this claim in their brief to the trial court in opposition to the defendants' motion for summary judgment, they did raise it at oral argument before the court. They argued that "[t]here is a definition of work under Connecticut law," § 31-76b (2) (A), and "if you interpret that statute . . . this case is over. We win . . . ." The defendants argued in response that, although Connecticut law does govern, it must be interpreted through the predominant benefit test because of our Supreme Court's decision in *Sarrazin* v. *Coastal, Inc.*, 311 Conn. 581, 89 A.3d 841 (2014), in which the court applied the predominant benefit test to a Portal-to-Portal Act issue.[15]

The trial court in the present case ultimately agreed with the defendants. In its decision, the court stated: "§ 31-76b concerning overtime pay includes a definition of how to calculate '[h]ours worked.' [General Statutes § 31-76b (2) (A).] It says 'time allowed for meals shall be excluded unless the employee is required or permitted to work.' [General Statutes § 31-76b (2) (A).] 'Work' in turn has been interpreted by the Connecticut Supreme Court. In 2014 in *Sarrazin* v. *Coastal, Inc.*, [supra, 311 Conn. 581] the [c]ourt said an employee is engaged in 'work' when spending time 'predominantly for the employer's benefit.' " Because the court in its memorandum of decision already had determined that the plaintiffs' meal breaks were predominantly for their own benefit, it therefore rejected the plaintiffs' argument.

On appeal, the plaintiffs argue that the court erred in applying the predominant benefit test in its § 31-76b (2) (A) analysis. They contend that their meal breaks were "hours worked" pursuant to the plain language of § 31-76b (2) (A) because they were required by Hy's policies to "guard" their limousines and remain within two miles of their next pickup and, therefore, were required to be "at the prescribed work place . . . ." The defendants argue that this claim is an "attempted ambuscade" because the plaintiffs "did not assert that there was any difference between the Connecticut [minimum wage act] standard and the . . . FLSA standard prior to oral argument," and because the plaintiffs' own motion for summary judgment cited to *Sarrazin* "for the proposition that Connecticut law requires that

employers pay their employees for all time that is spent 'predominantly for the employer's benefit.' " The defendants further argue that, nonetheless, this claim fails as a matter of law. They maintain that the plaintiffs' interpretation of the statute—that they are working during their meal breaks because they are required to remain at their prescribed workplace—renders the meal break exclusion of the statute superfluous. They contend that the statute "can be read simply and easily . . . as mandating that time during which an employee is required to be at an employer's premises or other workplace constitutes hours worked, except for meal break time, provided no work is done during the meal break," and that *Sarrazin* "is the best authority for the definition of 'work' in Connecticut."

Analysis of this claim "raises a question of statutory construction, which is a [question] of law, over which we exercise plenary review. . . . The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply." (Internal quotation marks omitted.) *Weems* v. *Citigroup, Inc.*, 289 Conn. 769, 778–79, 961 A.2d 349 (2008). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . .

"A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation . . . . When a statute is not plain and unambiguous, among other things, we look for interpretive guidance . . . to the legislative policy [the statute] was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Citations omitted; internal quotation marks omitted.) *Centrix Management Co., LLC* v. *Fosberg*, 218 Conn. App. 206, 210, 291 A.3d 185 (2023).

We begin with the text of § 31-76b (2) (A), which defines "[h]ours worked" as "all time during which an employee is required by the employer to be on the employer's premises or to be on duty, or to be at the prescribed work place, and all time during which an employee is employed or permitted to work, whether

or not required to do so, *provided time allowed for meals shall be excluded unless the employee is required or permitted to work*. Such time includes, but shall not be limited to, the time when an employee is required to wait on the premises while no work is provided by the employer." (Emphasis added.) General Statutes § 31-76b (2) (A). Section 31-76b (2) (A) does not address what constitutes "work." If, for example, a chauffeur is on his or her meal break but is required to monitor his or her phone for communications from dispatch, it is unclear under the statute whether that would be considered "work" such that the meal break would actually constitute an "hour worked." Moreover, if the plaintiffs are correct and employees are engaging in "work" under the statute whenever they are at their prescribed workplace regardless of whether they are on a meal break, then, as the defendants point out, the meal break exclusion of the statute would be superfluous, and "[i]t is well settled that [i]nterpreting a statute to render some of its language superfluous violates cardinal principles of statutory interpretation." (Internal quotation marks omitted.) *In re Annessa J.*, 343 Conn. 642, 674, 284 A.3d 562 (2022).

Although statutory silence does not generally "equate to ambiguity," it "may render a statute ambiguous when the missing subject reasonably is necessary to effectuate the provision as written." (Internal quotation marks omitted.) *State* v. *Ramos*, 306 Conn. 125, 136, 49 A.3d 197 (2012); see also *Stuart* v. *Stuart*, 297 Conn. 26, 37, 996 A.2d 259 (2010) (concluding silence as to standard of proof under statute that provides treble damages for civil theft renders statute ambiguous because there was "more than one plausible interpretation of its meaning"). In the present case, the missing subject—what is "work"—is reasonably necessary to effectuate the statutory definition of "hours worked." Without a definition of work, there is more than one plausible interpretation of its meaning under the statute. Accordingly, § 1-2z permits us to consult extratextual sources.

We first note that the legislative history, including from when § 31-76b (2) (A) was enacted as part of the overtime wage act; see Public Acts 1967, No. 493, § 1, codified at General Statutes § 31-76b (Cum. Supp. 1967); is silent about what constitutes "work" for purposes of this statute. The legislative history does make clear, however, that the purpose of the act was to make Connecticut law coextensive with federal overtime law. See, e.g., Proposed Senate Bill No. 1269, 1967 Sess. ("Statement of Purpose: To extend payment of the same overtime as provided in the federal law to all employees covered by the state minimum wage act"); Conn. Joint Standing Committee Hearings, Labor, 1967 Sess., p. 172, testimony of Department of Labor Deputy Commissioner Leo J. Dunn ("[Senate Bill No.] 1269 is merely to extend the payment of overtime as provided in the [f]ederal [l]aw to all that are covered by the [s]tate

[l]aw. Employers, many times, cite the differences as confusing . . . .''); see also *Williams* v. *General Nutrition Centers, Inc.*, 326 Conn. 651, 659, 166 A.3d 625 (2017) (''[General Statutes §] 31-76c, which sets forth the overtime requirement, is nearly identical to the federal overtime statute,'' 29 U.S.C. § 207 (a) (1)). We therefore look to decisions of federal courts interpreting ''work'' under the FLSA for guidance. See, e.g., *Weems* v. *Citigroup, Inc.*, supra, 289 Conn. 779–82 (looking to decisions of other courts interpreting ''wages'' in § 1-2z analysis after concluding Connecticut's statutory definition was ambiguous and its legislative history silent).

''Although the FLSA itself does not define 'work,' the [United States] Supreme Court has attempted to do so. In *Tennessee Coal, Iron & [Railroad] Co.* v. *Muscoda Local No. 123*, 321 U.S. 590, 598, 64 S. Ct. [698], 88 L. Ed. 949 (1944) [*Tennessee Coal*], the [c]ourt held that 'work' under the FLSA means 'physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.' At about the same time, the [c]ourt counseled that the determination of what constitutes work is necessarily fact-bound. See, e.g., *Armour & Co.* v. *Wantock*, 323 U.S. 126, 133, 65 S. Ct. [165], 89 L. Ed. 118 (1944) ('Whether time is spent predominantly for the employer's benefit or for the employee's is a question dependent upon all the circumstances of the case.'); *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 136–37, 65 S. Ct. [161], 89 L. Ed. 124 (1944) (similar).'' *Reich* v. *Southern New England Telecommunications Corp.*, supra, 121 F.3d 64. This has become known as the predominant benefit test.

Since *Tennessee Coal* and its progeny, federal and state courts consistently have applied the predominant benefit test in an effort to discern what constitutes compensable ''work,'' including in meal break cases interpreting 29 C.F.R. § 785.19, as discussed in part I of this opinion. In *Reich* v. *Southern New England Telecommunications Corp.*, supra, 121 F.3d 58, for instance, the Second Circuit concluded that, ''[t]o be consistent with the FLSA's use of the term 'work' . . . we believe 29 C.F.R. § 785.19 must be interpreted to require compensation for a meal break during which a worker performs activities predominantly for the benefit of the employer.'' Id., 64. The predominant benefit test also is used to define ''work'' in cases that present issues under the federal Portal-to-Portal Act relating to commuting time.

In the present case, both the court and the parties specifically relied on our Supreme Court's decision in *Sarrazin* v. *Coastal, Inc.*, supra, 311 Conn. 581, a Portal-to-Portal Act case. The court in *Sarrazin* stated: ''Decisions interpreting the Portal-to-Portal Act have carved out an exception to the general rule that travel time

is not compensable. Courts have emphasized that the employee bears the burden of demonstrating that his or her travel time is compensable, and that compensability turns on the question of whether the employee's travel time constitutes 'work.' . . . To determine whether travel time constitutes compensable 'work' under the Portal-to-Portal Act, courts consider . . . *whether the 'time is spent predominantly for the employer's benefit or for the employee's* [*which*] *is a question dependent upon all the circumstances of the case.*' " (Citations omitted; emphasis added.) Id., 598.

We find the federal interpretation of "work"—the predominant benefit test—highly persuasive. It is well settled that, when interpreting statutes, words and phrases are to be construed according to their "commonly approved usage"; General Statutes § 1-1 (a); and that is exactly what the United States Supreme Court did when it created the predominant benefit test. See *Tennessee Coal, Iron & Railroad Co.* v. *Muscoda Local No. 123*, supra, 321 U.S. 598 and n.11 (looking to dictionary definition of "work" in order to define it as it is "commonly used"). The federal test consistently has been applied to Portal-to-Portal Act cases to define "work," including by our Supreme Court in *Sarrazin*,[16] and has been applied by a majority of the federal courts of appeals in meal break cases involving 29 C.F.R. § 785.19, including the Second Circuit. See *Reich* v. *Southern New England Telecommunications Corp.*, supra, 121 F.3d 64. Given that the legislative purpose of § 31-76b (2) (A) was to make Connecticut's wage law coextensive with its federal counterpart, and the fact that our appellate courts customarily have looked to federal law when interpreting our analogous state law scheme; see, e.g., *Roto-Rooter Services Co.* v. *Dept. of Labor*, 219 Conn. 520, 528 n.8, 593 A.2d 1386 (1991) (considering federal precedent on meaning and scope of FLSA exemption in order to interpret equivalent state law exemption); we determine that the predominant benefit test should be applied to the plaintiffs' state law claim under § 31-76b (2) (A). See also *Williams* v. *General Nutrition Centers, Inc.*, supra, 326 Conn. 659 ("[w]e see no reason to interpret [the relevant Connecticut wage statute] differently from its federal counterpart").[17] Accordingly, we conclude that, pursuant to § 31-76b (2) (A), a meal break is not an "hour worked" unless the "employee is required or permitted to work" during that break, and the test for what constitutes "work" is the predominant benefit test. We therefore reject the plaintiffs' second claim.[18]

III

The plaintiffs finally claim that, even if the court correctly applied the predominant benefit test, it erred by concluding that the defendants had met their burden of demonstrating that, based on the undisputed facts, the meal breaks were for the predominant benefit of

the plaintiffs, not Hy's. We are not persuaded.

The predominant benefit test is a case-by-case analysis and requires "an inquiry that is undertaken by assessing the relative benefits gained by the employer and the burdens imposed on the employee by an employer's demands or restrictions [during] the employee's [meal breaks]." *Sarrazin* v. *Coastal, Inc.*, supra, 311 Conn. 598. Thus, "courts consider whether the 'time is spent predominantly for the employer's benefit or for the employee's [which] is a question dependent upon all the circumstances of the case.' " Id. "The balancing of benefits and burdens is on a continuum, and the more that the employer's requirements burden the employee, preventing the employee from using that . . . time as he otherwise would have, the more likely a court will conclude that the time is for the predominant benefit of the employer. Even if some . . . of the . . . time is for the predominant benefit of the employer, that activity will still be noncompensable if the amount of time involved is de minimis." Id., 602. Essentially, it is a "sliding scale," and, "at a certain point, when the benefits received by the employer and the burdens imposed on the employee are substantial, the time no longer can be viewed as belonging to the employee, and the time becomes compensable." Id., 600.

In *Singh* v. *City of New York*, 524 F.3d 361 (2d Cir. 2008), for instance, which, like *Sarrazin*, was a Portal-to-Portal Act case, the Second Circuit affirmed the District Court's summary judgment rendered in favor of the defendant employer because it concluded that the time for which the plaintiff employees were seeking compensation was de minimis as a matter of law and did not constitute work under the predominant benefit test. Id., 364, 368–69. In that case, the employees were fire alarm inspectors who were required to carry and keep safe necessary inspection documents during their commutes from home to work and back. Id., 365. They argued "that carrying and keeping safe inspection files [affected] their commutes in various ways and that they should therefore be compensated for their time and effort." Id. The Second Circuit disagreed. It noted that, in order for the plaintiffs to prevail under the Portal-to-Portal Act, they had to demonstrate, inter alia, that carrying the documents during their commute constituted work; id., 367; and "whether an employee's expenditure of time is considered work under the FLSA turns in part on whether that time is spent predominantly for the benefit of the employer or the employee." Id., 368. The court elaborated, stating that, in applying the predominant benefit test, "courts have distinguished between employer requirements that substantially hinder an employee's ability to use the time freely and those requirements that place only *a minimal burden* on the employee's use of time." (Emphasis added.) Id.

Ultimately, the court in *Singh* concluded that "[c]arrying a briefcase during a commute presents only a minimal burden on the inspectors, permitting them freely to use their commuting time as they otherwise would have without the briefcase. Whether it be reading, listening to music, eating, running errands, or whatever else the plaintiffs choose to do, their use of the commuting time is *materially unaltered*. While the [city employer] certainly benefits from the plaintiffs' carrying these materials, it cannot be said that the [c]ity is the predominant beneficiary of this time."[19] (Emphasis added.) Id., 368–69. Accordingly, the court affirmed the summary judgment rendered in favor of the defendant.

In addition to *Singh*, we agree with the defendants that *Perkins* v. *Bronx Lebanon Hospital Center*, 715 Fed. Appx. 103 (2d Cir. 2018), is instructive. In *Perkins*, the Second Circuit affirmed the District Court's summary judgment rendered in favor of the defendant employer. As summarized by the District Court, the plaintiff in *Perkins*, a "safety officer" employed by the defendant hospital, had to remain on the premises during his meal break and "carry his 'radio, cell phone and/or [f]ire [c]ommand pager' " at all times so that he could be contacted in case of an emergency. *Perkins* v. *Bronx Lebanon Hospital Center*, United States District Court, Docket No. 14-civ.-1681 (JCF) (S.D.N.Y. October 31, 2016), aff'd, 715 Fed. Appx. 103 (2d Cir. 2018). If his meal break was interrupted, hospital policy required him to notify his supervisor so that he could be paid for the time. Id. The District Court concluded that, "[a]lthough the [h]ospital indisputably receive[d] some benefit from [the officer's] presence on site, he has the ability to spend his thirty-minute break as he wishes as long as he remains on the premises with a communications device so that he can be contacted in the event of an emergency, and his thirty-minute break has rarely, if ever, been interrupted. Those restrictions do not 'convert . . . meal time to work time.' "[20] Id. The Second Circuit agreed. See *Perkins* v. *Bronx Lebanon Hospital Center*, supra, 715 Fed. Appx. 104. In its brief analysis, the Second Circuit stated: "For a meal break to be compensable under the FLSA and [the relevant New York State law], that break must be predominantly for the benefit of the employer. . . . Review of the record and relevant case law reveals that the district court correctly concluded that [the officer's] mealtime activities were not predominantly for the hospital's benefit." (Citation omitted.) Id. It consequently affirmed the District Court's summary judgment rendered in favor of the defendant. Id.

We similarly conclude, on the basis of our plenary review of the record, that the defendants met their initial burden of establishing the lack of a genuine issue of material fact that the plaintiffs' meal breaks were predominantly for their own benefit and, accordingly,

were not compensable as a matter of law. The evidence submitted by the defendants in support of their motion for summary judgment, particularly the excerpts from the named plaintiffs' depositions, established that the plaintiffs had used their meal breaks for their own benefit and that any burdens placed on them during their breaks were too minimal for it to be said that Hy's was the predominant beneficiary of the time.

The undisputed evidence in the record supports the trial court's determination that the plaintiffs were able to spend their meal break time as they wished. For example, one of the named plaintiffs, Dziekan, stated that, during his meal breaks he would go to malls, convenience stores, restaurants, and offtrack betting. Dziekan also agreed that, in addition to going into restaurants on his meal breaks, he engaged in other activities such as using the Internet on his phone and conversing with other chauffeurs outside, in one another's vehicles, or at service areas at airports. Another named plaintiff, Akhundzadeh, also agreed that, during his breaks, he could go to a restaurant within two miles of his next pickup location and could "go to a limousine parking lot and chat with friends, acquaintances, [or] other coworkers . . . ."

Although it is undisputed that the plaintiffs were expected to engage in some activities during their meal breaks for Hy's benefit, the defendants have submitted evidence establishing that, as a matter of law, those activities did not transform the meal breaks into compensable work time. For instance, it is undisputed that the plaintiffs were expected to keep their phones on them during their meal breaks so that they could converse with dispatch about new or upcoming trips. However, Dziekan stated in his deposition that he never was unable to enter a restaurant during his breaks because of the risk of dispatch calling him and that, when his meals had been interrupted, he was compensated for the break. It also is undisputed that the plaintiffs were required to monitor the status of their next passenger's arrival flight and, if necessary, clean and vacuum the limousine between trips and get gas. Yet, the undisputed evidence shows that these tasks would only take a few minutes, if they were performed at all. Dziekan testified that monitoring the flight status takes "a few clicks" and that he did not need to vacuum between every trip. Moreover, when Akhundzadeh was asked, "[a]side from [keeping your smartphone on], during these long breaks . . . what were you doing predominantly for the benefit of Hy's during that time period?" he responded, "[j]ust being on call."

Thus, the plaintiffs do engage in some mealtime activities that are indisputably for Hy's benefit, such as keeping their phones on and cleaning the limousines. However, as in *Singh* and *Perkins*, the defendants have demonstrated that those restrictions are minimal, and

that, despite these activities, the plaintiffs could spend their breaks however they wished, whether that was by "reading, listening to music, eating"; *Singh* v. *City of New York*, supra, 524 F.3d 368; or even sports betting. Accordingly, we conclude that the defendants have met their initial burden to demonstrate that, based on the undisputed facts, the plaintiffs' meal breaks were not compensable as a matter of law.

Because the defendants met their initial burden, the plaintiffs then needed to present evidence that demonstrated the existence of a genuine issue of material fact. See, e.g., *Washburne* v. *Madison*, 175 Conn. App. 613, 619–20, 167 A.3d 1029 (2017), cert. denied, 330 Conn. 971, 200 A.3d 1151 (2019). On appeal, the plaintiffs argue that they met their burden because they established that Hy's required them to "guard" their limousines and stay within two miles of their next pickup location. They argue that, therefore, there is a genuine issue of material fact as to whether the meal breaks were for Hy's benefit.

The plaintiffs primarily refer to the following policies in support of their argument: a provision in Hy's employee handbook providing that chauffeurs may be subject to discipline if, inter alia, they "leav[e] a company vehicle unattended for any reason other than the occasion of performing an 'airport pickup' "; a handbook provision relating to chauffeur liability for vehicle damage, which they argue the defendants "routinely charged the[m] [for] under that provision regardless of whether they were at fault"; and the language from the December 30, 2015 meal break policy, providing that the plaintiffs "may take [their meal] break anywhere within a radius of [two] miles from [their] next pick up." The plaintiffs argue that these policies prevented them from using their meal breaks for their own purposes because they were restricted to the two mile radius surrounding their next pickup location and had to guard their limousines during their breaks or otherwise risk being disciplined or facing financial liability. As support for this argument, the plaintiffs rely on *Reich* v. *Southern New England Telecommunications Corp.*, supra, 121 F.3d 58. We disagree.

First, although the plaintiffs rely on these policies to support their position that they had to "guard" their vehicles and, thus, were unable to use their meal breaks for their own purposes, the record indicates these policies were not strictly enforced. For instance, Zubrinsky testified in his deposition that the two mile radius rule "wasn't a strict two miles, you know; guys went more than that, [a]s long as it was reasonable," and that, if "[s]omebody went three or four miles, nobody's bothering anybody." But even if this policy was strictly enforced, federal case law applying the predominant benefit test has consistently held that meal breaks are noncompensable even if the employee is required to

remain on the premises, let alone remain within a two mile radius of the premises. See, e.g., *Perkins* v. *Bronx Lebanon Hospital Center*, supra, 715 Fed. Appx. 104; *Babcock* v. *Butler*, supra, 806 F.3d 157; *Ruffin* v. *MotorCity Casino*, 775 F.3d 807, 814 (6th Cir. 2015).[21] Moreover, Dziekan's testimony that he would go to restaurants, offtrack betting, and malls demonstrates that this time, regardless of the geographic parameters, belonged predominantly to the plaintiffs, not Hy's.

More importantly, we are unpersuaded by the plaintiffs' argument because they have not provided any evidence to support their claim that they actually did "guard" their limousines. They have failed to identify a single specific instance in which they lacked the opportunity to take a meal break because they were compelled to "guard" their vehicles. In fact, the defendants have provided evidence to the contrary. Dziekan was specifically asked at his deposition whether he was ever "standing out there guarding the car" during his meal breaks, to which he responded, "[n]o." He was then asked, "[w]hen you go in a restaurant to have a meal, do you always sit by the window to watch the car?" and he again responded, "[n]o, I do not." He later stated in response to another question about sitting by the window at a restaurant: "Generally, I don't really keep that in mind. I—you know, back of my mind I'm maybe looking out the window, but I don't necessarily make a conscious effort to do that."

Finally, we are not persuaded by the plaintiffs' reliance on *Reich* v. *Southern New England Telecommunications Corp.*, supra, 121 F.3d 58. In *Reich*, the workers were employed to install, replace, and maintain telephone poles and cables, and therefore "routinely work[ed] on the lines strung between telephone poles, in trenches . . . and in manholes." Id., 62. They were therefore required to stay on the worksite during their meal breaks so they could "secure the area and its equipment and to prevent possible harm to the public." Id., 63. The Second Circuit concluded that their meal breaks were compensable because they were "restricted to the site for the purpose of performing valuable security service for the company." Id., 65. In reaching this conclusion, the court relied on the "importance, indeed indispensability," of the services the workers provided and the fact that, if the workers were not providing this security, the employer would have had to pay others to perform that very service. Id. Again, the plaintiffs in the present case have not provided any evidence to support their contention that they had, in fact, been "guarding" their limousines during their meal breaks, and the record supports a contrary conclusion. Moreover, even if we assume, arguendo, that the plaintiffs had provided such evidence, we are still not persuaded by their reliance on *Reich* because it is indisputable that "guarding" a limousine parked in a restaurant parking lot is not as "indispensable" of a service as the

service provided by the workers in *Reich*.

In sum, we conclude that there was no genuine issue of material fact that the plaintiffs' meal breaks were predominantly for their own benefit, and, therefore, the defendants were entitled to judgment as a matter of law. Accordingly, the court properly rendered summary judgment in favor of the defendants.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] The class is defined as "[a]ll current and former employees of [the] defendants who were employed as chauffeurs at any time from January 31, 2016, through the date of final judgment."

[2] We note that the plaintiffs also filed a motion for partial summary judgment in which they argued that Hy's policy governing chauffeur meal breaks was an enforceable contract that required the defendants to completely relieve the plaintiffs from their duties during meal breaks. The plaintiffs further argued that the defendants did not do so, and, therefore, they were entitled to summary judgment. We refer to this argument as the plaintiffs' "contract theory." Although the court did not state specifically that it was denying the plaintiffs' motion, it did conclude that, "[a]s a matter of law on the undisputed facts, [the] meal break policy was not a contract," and it rendered summary judgment in favor of the defendants on the plaintiffs' only claim. The plaintiffs did not specifically file a cross appeal from the implicit denial of their motion. In their preliminary statement of issues and appellate brief, however, the plaintiffs have challenged the court's denial.

Generally, "the denial of a motion for summary judgment is not . . . a final judgment and, thus, not immediately appealable . . . ." (Internal quotation marks omitted.) *Freidheim* v. *McLaughlin*, 217 Conn. App. 767, 777 n.3, 290 A.3d 801 (2023). "[However] if parties file . . . motions for summary judgment and the court grants one and denies the other, this court has jurisdiction to consider both rulings on appeal." (Internal quotation marks omitted.) Id. The plaintiffs also assert their "contract theory" in support of their argument that the court erred by granting the defendants' motion for summary judgment. We reject this claim in part I of this opinion, and, therefore, we affirm the court's denial of the plaintiffs' motion.

[3] According to its narrative report, the wage and hour division did not discover any apparent violations.

[4] The United States Department of Labor regulation cited in the policy memorandum, 29 C.F.R. § 785.19 (2016), provides in relevant part: "(a) Bona fide meal periods. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. . . . The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. . . ."

[5] Connecticut's taxicab exemption, General Statutes § 31-76i, provides in relevant part: "The provisions of sections 31-76b to 31-76j, inclusive, shall not apply with respect to . . . (8) any person employed as a taxicab driver by any employer engaged in the business of operating a taxicab, if such driver is paid forty per cent or more of the fares recorded on the meter of the taxicab operated by him . . . ."

[6] The defendants claim in their brief to this court that the trial court had improperly granted the plaintiffs' motion for class certification because the plaintiffs failed to demonstrate that they met the requirements of Practice Book §§ 9-7 and 9-8 (3). We decline to address this claim because the defendants failed to file an appeal or a cross appeal on this issue pursuant to Practice Book § 61-8. See, e.g., *Avon* v. *Freedom of Information Commission*, 210 Conn. App. 225, 227 n.1, 269 A.3d 852 (2022).

[7] On appeal to this court, the defendants primarily make this same argument—that the trial court correctly determined that the meal breaks were not compensable because they were predominantly for the benefit of the plaintiffs, not Hy's. They also assert, as an alternative ground for affirming the trial court's judgment, that none of the plaintiffs had reported their complaints to Hy's, and, therefore, Hy's was not on notice that the plaintiffs were working during their meal breaks. In light of our ultimate decision,

we need not address this alternative ground for affirmance.

[8] See footnote 2 of this opinion.

[9] General Statutes § 31-76b (2) (A) defines "[h]ours worked" as "all time during which an employee is required by the employer to be on the employer's premises or to be on duty, or to be at the prescribed work place, and all time during which an employee is employed or permitted to work, whether or not required to do so, provided time allowed for meals shall be excluded unless the employee is required or permitted to work. Such time includes, but shall not be limited to, the time when an employee is required to wait on the premises while no work is provided by the employer."

[10] Additionally, two federal courts of appeals have applied the predominant benefit test to an analysis of 29 C.F.R. § 785.19 in conjunction with 29 U.S.C. § 207 (k), which contains special requirements applicable only to law enforcement officers and firefighters. See *Lamon* v. *Shawnee*, 972 F.2d 1145, 1155 (10th Cir. 1992), cert. denied, 507 U.S. 972, 113 S. Ct. 1414, 122 L. Ed. 2d 785 (1993); *Kohlheim* v. *Glynn County*, 915 F.2d 1473, 1476–77 (11th Cir. 1990).

[11] The court specifically concluded that the policy was not a contract because of a disclaimer in Hy's employee handbook. The disclaimer states: "Policies set forth in this handbook do not create an employment contract. The policies and procedures contained here are not intended to create a contract or contractual obligations of any kind, or a contract of employment between Hy's and any of its employees. The provisions of the Handbook may be amended or added to with the express written approval of Ownership."

Notably, neither party raised the disclaimer in the trial court. "This court has held that a trial court lacks authority to render summary judgment on a ground not raised or briefed by the parties that does not implicate the court's subject matter jurisdiction." *Kurisoo* v. *Ziegler*, 174 Conn. App. 462, 470–71, 166 A.3d 75 (2017). Moreover, the defendants have failed to provide us with an adequate record. Specifically, the copy of the handbook that the defendants provided to the trial court as an exhibit to their motion for summary judgment states that it was revised in 2017, and they have not pointed us to anything in the record to show that there was a disclaimer in the handbook in 2015, when the policy was emailed to the plaintiffs.

Thus, we conclude that the court did not have the authority or support in the record to rely on the disclaimer in rejecting the plaintiffs' argument. Nevertheless, for the reasons stated in this opinion, we affirm the court's rendering of summary judgment in favor of the defendants.

[12] The court also concluded that, even if the meal break policy were a contract that was governed by the completely relieved from duty test, there was no genuine issue of material fact that the plaintiffs were completely relieved from their duties during their meal breaks, and, therefore, the defendants were entitled to summary judgment. We need not address this determination because of our ultimate conclusion that the completely relieved from duty test is not applicable.

[13] "Although decisions of the Second Circuit are not binding on this court . . . [f]ederal case law, particularly decisions of the [Second Circuit] . . . can be persuasive in the absence of state appellate authority . . . ." (Citation omitted; internal quotation marks omitted.) *United Public Service Employees Union, Cops Local 062* v. *Hamden*, 209 Conn. App. 116, 129 n.6, 267 A.3d 239 (2021).

[14] In part III of this opinion, we conclude, based on our plenary review of the record, that the trial court correctly determined that the plaintiffs' breaks were predominantly for their own benefit and, therefore, that the court properly rendered summary judgment in favor of the defendants.

[15] The Portal-to-Portal Act of 1947, 29 U.S.C. § 254 (a), as amended by the Employee Commuting Flexibility Act of 1996, Pub. L. No. 104-188, 110 Stat. 1928, was enacted "in response to initial, broad judicial interpretations of the FLSA that had found employer liability for a variety of preliminary and postliminary activities, thus creating wholly unexpected liabilities. . . . [The Portal-to-Portal Act], accordingly, narrowed the coverage of the FLSA by excluding liability for most commuting time and preliminary and postliminary activities. . . . The Employee Commuting Flexibility Act of 1996 further limited employer liability by amending the Portal-to-Portal Act to clarify that otherwise non-compensable commuting to work is not compensable merely because the employee uses his employer's vehicle." (Citations omitted; internal quotation marks omitted.) *Sarrazin* v. *Coastal, Inc.*, supra, 311 Conn. 586–87 n.9.

[16] Although the plaintiff in *Sarrazin* asserted violations of the FLSA and Connecticut law, the court concluded that § 31-60-10 of the Regulations of

Connecticut State Agencies, which defines "[t]ravel time" and is seemingly this state's version of the federal Portal-to-Portal Act, confers lesser benefits to employees than does its federal counterpart based on the facts of the case. Consequently, the court concluded that the Connecticut statute was preempted and, therefore, conducted an analysis only under federal law. Justice McDonald authored a concurring opinion in which he disagreed with the majority that the Connecticut statute was preempted. See *Sarrazin* v. *Coastal, Inc.*, supra, 311 Conn. 616–17 (*McDonald, J.*, concurring). His analysis under state law, however, yielded the same result—that the court did not err in concluding that the plaintiff's commuting time was not compensable. Id., 625–26.

Because the court analyzed the plaintiff's claim under federal law, and because *Sarrazin* was a Portal-to-Portal Act case, which the present case is not, we therefore agree with the plaintiffs that *Sarrazin* does not require that, for purposes of Connecticut minimum wage law, the predominant benefit test is the applicable test for what constitutes "work." We consequently agree with the plaintiffs that the trial court erred in citing *Sarrazin* as the authority for its application of the predominant benefit test in its § 31-76b (2) (A) analysis without first engaging in statutory interpretation. However, because we conclude that the federal predominant benefit test is the best definition of "work" for purposes of interpreting § 31-76b (2) (A), we nonetheless affirm the court's judgment. See, e.g., *Amsden* v. *Fischer*, 62 Conn. App. 323, 327, 771 A.2d 233 (2001) (this court "may affirm a trial court's decision that reaches the right result, albeit for the wrong reason" (internal quotation marks omitted)).

We also note that our decision to use the predominant benefit test to interpret § 31-76b (2) (A) is bolstered by the regulation that was relevant in *Sarrazin*, § 31-60-10 (b) of the Regulations of Connecticut State Agencies, which provides in relevant part: "When an employee, in the course of his employment, is required or permitted to *travel for purposes which inure to the benefit of the employer*, such travel time *shall be considered to be working time* and shall be paid for as such. . . ." (Emphasis added.) Thus, the Department of Labor regulation seemingly subscribes to the concept of the predominant benefit analysis in ascertaining what constitutes "work" for purposes of Connecticut wage law.

[17] Notably, the plaintiffs themselves seem to agree that it is appropriate for us to rely on federal case law interpreting the FLSA to interpret this state's minimum wage act. In the section of their brief describing the nature of the proceedings and facts of the case, the plaintiffs state: "Connecticut courts look to federal FLSA interpretations to construe the Connecticut [Minimum] Wage Act. The Second Circuit has held that employers must pay wages if they require their employees to spend their time 'predominantly for the benefit of the employer.' *Reich* v. [*Southern New England Telecommunications Corp.*, supra], 121 F.3d [64] . . . (employer required to pay workers because they required that workers guard the employer's vehicles during meal breaks)." The plaintiffs even seem to agree that using the federal test is appropriate for interpreting an undefined term in § 31-76b (2) (A). In one of their arguments in their brief to this court, they state: "Under . . . § 31-76b (2) [(A)], employee time is compensable as 'hours worked' if the employee is 'on duty.' While 'on duty' is not defined by statute, Connecticut courts 'look to decisions interpreting [the] FLSA with respect to claims brought under the [this state's minimum wage act].' . . . *Roto-Rooter Services Co.* v. *Dept. of Labor*, [supra], 219 Conn. 528 n.8 . . . . The Second Circuit has held that employees' time is compensable if it is 'predominantly for the benefit of the employer.' " (Citations omitted.)

[18] At least one court, the United States District Court for the District of Connecticut, already has applied the predominant benefit test to a § 31-76b (2) (A) analysis. In *Richardson* v. *Costco Wholesale Corp.*, 169 F. Supp. 2d 56 (D. Conn. 2001), the plaintiff employees alleged violations of both the FLSA and Connecticut minimum wage law. They alleged that they were required to remain locked in the defendant employer's warehouse after their shifts until the conclusion of the daily closing collection procedure during which employees would, among other things, bring cash from the cash registers to the vault. Id., 59. The employees claimed that the employer's failure to pay them wages for that time constituted a violation of federal and state law. Id. The court stated: "Section 31-76b (2) (A) defines 'hours worked' as 'all time during which an employee [is required] by the employer . . . to be on the employer's premises or to be on duty, or to be at the prescribed work place, and all time during which an employee is employed or permitted to work, whether or not required to do so.' Thus, the determina-

tion of whether plaintiffs' claim is meritorious depends upon whether their time spent during the 'lock-up' constitutes work as defined by the Connecticut General Statutes and the FLSA." Id., 60. In a footnote, the court noted that, "[t]o interpret the Connecticut wage and hour statutes, Connecticut courts look to authorities relevant to the FLSA. See *Canzolino* v. *United Technologies* [*Corp.*, judicial district of Ansonia-Milford, Docket No. CV-94-0147285 (November 30, 1998) (23 Conn. L. Rptr. 207)]." *Richardson* v. *Costco Wholesale Corp.*, supra, 60 n.1. The court then applied the predominant benefit test in order to decide whether the employees' time locked up in the warehouse constituted compensable time. Id., 60–61.

[19] The Second Circuit acknowledged in *Singh* v. *City of New York*, supra, 524 F.3d 369, that its predominant benefit test analysis "in many ways resembles a de minimis test" analysis. The de minimis doctrine originated in a United States Supreme Court decision, *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680, 66 S. Ct. 1187, 90 L. Ed. 1515 (1946), in which the court observed: "When the matter in issue concerns only a few seconds or minutes of work beyond the scheduled working hours, such trifles may be disregarded. Split-second absurdities are not justified by the actualities of working conditions or by the policy of the [FLSA]. It is only when an employee is required to give up a substantial measure of his [or her] time and effort that compensable working time is involved." Id., 692. The de minimis doctrine has since been construed as requiring the application of three distinct factors: "(1) the administrative difficulty of recording the time; (2) the size of the claim in the aggregate; and (3) whether the tasks occur regularly." *Gorman* v. *Consolidated Edison Corp.*, 488 F.3d 586, 594–95 n.7 (2d Cir. 2007), cert. denied, 553 U.S. 1093, 128 S. Ct. 2902, 171 L. Ed. 2d 841 (2008). It is often applied in Portal-to-Portal Act cases, including by the Second Circuit. See, e.g., id., 593; see also id., 594 n.7 (concluding that, based on three factors, pleadings supported finding that time employees spent conducting various activities, such as walking to jobsite and waiting in line to pass through X-ray machine, was so de minimis that it did not constitute compensable work).

In *Singh*, the Second Circuit stated: "Although we reach our holding based on the predominant benefit test, our analysis in many ways resembles a de minimis test. In an analogous case, the United States Court of Appeals for the Sixth Circuit held that police officers need not be compensated for their entire commuting time, during which they were required to monitor police radios in order to respond to emergencies, because 'the amount of work involved in monitoring a police radio during a commute is simply de minimis.' [*Aiken* v. *Memphis*, 190 F.3d 753, 759 (6th Cir. 1999), cert. denied, 528 U.S. 1157, 120 S. Ct. 1164, 145 L. Ed. 2d 1075 (2000)]. As the court explained, the compensability of the commute is determined by 'whether the employer requires the employee to perform a significant amount of work during the commute.' [Id., 759 n.4]. Our analysis mirrors that of the Sixth Circuit; we simply reach our holding through a slightly different path. The point is that, under either approach, when an employee is minimally restricted by an employer during a commute, such that his or her use of commuting time is materially unaltered, the commuting time will generally not be compensable under the FLSA." *Singh* v. *City of New York*, supra, 524 F.3d 369.

In the present case, we acknowledge that our analysis resembles a de minimis test analysis to some extent. However, we, like the Second Circuit in *Singh*, instead reach our holding through the predominant benefit test path.

[20] We also find two cases that the District Court in *Perkins* relied on to be persuasive. The court first relied on a decision of the United States Court of Appeals for the Sixth Circuit, *Ruffin* v. *MotorCity Casino*, 775 F.3d 807 (6th Cir. 2015). In that case, the plaintiffs, security guards for a casino, argued that their meal breaks should constitute compensable time because they were required to remain on the casino property, monitor two-way radios, and respond to emergencies if necessary. Id., 809. The court disagreed. It concluded that, under the predominant benefit test, the security guards were not engaging in compensable "work." Id., 814. It specifically concluded that monitoring a radio "is a de minimis activity, not a substantial job duty"; id., 812; and that the evidence was "undisputed that [the] plaintiffs spent their meal periods 'adequately and comfortably' . . . by eating, reading, socializing, and conducting personal business on their phones . . . ." (Citation omitted.) Id. Accordingly, the court "affirm[ed] the grant of summary judgment to [the defendant]." Id., 809.

The District Court in *Perkins* also relied on *Babcock* v. *Butler*, supra, 806 F.3d 153. In *Babcock*, the plaintiffs were correction officers who claimed that their meal breaks constituted compensable time because they could not leave the prison without permission from the warden and had to "remain

in uniform, in close proximity to emergency response equipment, and on call to respond to emergencies." Id., 155. They argued that, because of these policies, they could not "run personal errands, sleep, breathe fresh air, or smoke cigarettes during mealtime," and, therefore, they should be compensated. Id. The United States Court of Appeals for the Third Circuit concluded that the District Court had properly granted the defendant's motion to dismiss on the ground that the meal periods were not compensable. Id., 158. The Third Circuit specifically concluded that, "although [the plaintiffs] face[d] a number of restrictions during their meal period, the District Court correctly found that, on balance, these restrictions did not predominantly benefit the employer." Id., 157.

[21] Notably, even the federal regulation that the plaintiffs argued was applicable pursuant to their contract theory, 29 C.F.R. § 785.19, provides that "[i]t is not necessary that an employee be permitted to leave the premises" in order for a meal break to be bona fide. 29 C.F.R. § 785.19 (b).