

BASICS OF CALIFORNIA MEAL AND REST PERIOD LAW

California has some of the most worker-friendly laws in the country. Whether you are an employee or employer, it is wise to know them. As a worker, you deserve to receive all the benefits that the law provides; as an employer, you may avoid costly lawsuits and penalties if you ensure that your policies and practices conform to the law. This article reviews some of the basic components of California's "meal and rest period" law.

Rest Periods

With very few exceptions (discussed below), every employee must be allowed to take a 10-minute rest period during each shift of more than two hours and before the end of the fourth hour of work. That means if an employee works an 8 hour shift, he or she must receive two 10-minute "breaks," one in the first half of the day, one in the second. These rest periods are paid breaks; an employer must pay wages for that time. Moreover, a rest period must be uninterrupted and completely duty-free. An employer is not allowed to call a worker back from a break after five minutes to help a customer and then let the worker "take five" later on. California law mandates that rest periods may not be waived by mutual agreement. The law is in place for the benefit of workers' health and safety.

Meal Periods

Meal periods must be provided to an employee who works a shift of more than 5 hours. A meal period must be at least 30-minutes in length, and, like rest periods, be uninterrupted and completely duty-free. However, an employer need not pay wages for meal periods. An employer may therefore schedule a shift of 8.5 hours and provide a 30-minute unpaid meal period, or pay an employee for 7.5 hours if a half hour break is given during an 8 hour shift.

What if an Employer Does Not Permit a Meal or Rest Period?

If an employer violates the above-mentioned meal and rest period laws, the employee is owed one hour of pay at his or her regular rate of pay for each missed break. So, for example, if a worker makes \$10.00/ hour, and is denied a meal period each day of a five day work week, that employee is owed an extra \$50.00 of wages for that week. The employer faces other liabilities as well.

Waiver of Meal Periods is Permitted in Only Limited Circumstances

In contrast to rest periods, which may not be waived, an employer and employee may agree in writing that the employee will not take a meal period, but only if the employer meets a very strict test, which considers: (1) whether the *nature of the work prevents* the employee from being relieved of all duty during the meal period, and (2) the employee's ability to revoke the agreement at any time. When determining if the nature of an employee's job prevents a duty-free meal period from being taken, a court will likely consider, among other things: (1) the type of

work; (2) the availability of other employees to provide relief to an employee during a meal period; (3) the potential consequences to the employer if the employee is relieved of all duty during a meal period; (4) the ability of an employer to anticipate and mitigate these consequences such as by scheduling the work in a manner that would allow the employee to take an off duty meal break. Some legal authority suggests that waiver of a duty-free meal period is inappropriate unless these factors show that it is “virtually impossible” for the employer to provide the employee with a duty-free meal period. Employers should therefore consider very carefully whether a meal period waiver is appropriate or not. Economic hardship (for a small business in particular) such as the expense of hiring two employees (so that breaks may be taken) is most likely not an acceptable reason under this test to ask an employee to sign a meal period waiver.

Unsettled Law

It may come as a surprise that some very important aspects of California meal and rest period laws are in an unsettled state. As I write, a case is pending before the California Supreme Court that has the potential to define the extent to which employers must take *active steps* to ensure that employees take the breaks that an employer’s policy (written or otherwise) might apparently “provide.” The case is *Brinker Restaurant v. Superior Court*, and the Supreme Court, as of June 2011, has still not delivered its opinion; the case has been pending for two years. Meanwhile, California’s Department of Labor Standards Enforcement (which has the power to penalize employers) has issued a statement that employers do not fulfill the obligation of providing breaks if policies or actions discourage meal breaks from being taken or if the employer merely assumes that breaks are taken. With this in mind, it would be wise for employers to take documented, active steps to ensure that meal periods are taken by all employees.

Exceptions to the Meal and Rest Period Requirements

First, to be clear, there is *no* exception to the requirement that an employer provide meal and rest periods when the operation is busy, other employees call in sick, or even if an employee is in middle of helping a customer when the employee’s break time is mandated. The most common exceptions to California’s meal and rest period law are for certain categories of highly paid executives, administrators and professionals. For a worker to be “exempt” from meal and rest period laws requires that the employer pay the employee at least twice the applicable minimum wage (currently, this would be at least \$16.00/hr). In addition to the salary requirement, in order to be exempt the employee must generally also be employed in a capacity that involves, among other things, a significant degree of “discretion and independent judgment” regarding important policies of the company. Whether an exemption genuinely applies or not is often a difficult legal question. However, workers who routinely engage in production work, customer service and/or maintenance will probably not be considered exempt, and should therefore be provided with meal and rest periods.

In conclusion, California provides employees and employers alike with significant rights and obligations concerning meal and rest breaks. It is all too common for employers to unknowingly violate meal and rest period laws (making them liable for claims for substantial back wages and penalties) and for employees to miss out on the “breaks” (or the extra compensation for a missed break) to which they are entitled.

© Daniel J. O’Connell, November 2009, updated June 2011.

Daniel J. O’Connell is an attorney in San Francisco. Contact him at: djoconnell.esq@gmail.com or 415-272-3811, and visit his website at www.djolawoffice.com.