

Breaks and Infant Feeding

Employment Relations Act

An amendment to the Employment Relations Act was passed to amend legislation around meal and rest breaks. This legislation took effect from 6 April 2019 and the changes are outlined below.

Meal and Rest Breaks

Employees are entitled to paid rest and unpaid meal breaks that:

- give them a reasonable chance during work periods to rest, refresh and take care of personal matters
- are appropriate for the length of their working day with the employer.

Rest breaks benefit workplaces by helping employees work safely and productively. Employers must pay for minimum rest breaks but don't have to pay for minimum meal breaks.

Employees are entitled to set rest and meal breaks. Compensation for the employee will only be allowed instead of these breaks if an exemption applies and certain requirements are met.

The length and timing of rest and meal breaks are based on the number of hours an employee works in a day. The Act provides an exemption from the required set rest and meal break entitlements in certain circumstances for essential services or employers that engage in New Zealand's national security.

Employers and employees should agree when the breaks are to be taken. If the employer and employee cannot reach an agreement on the timing of breaks, the law will require the breaks to be taken at times as specified in the Act, so long as it's reasonable and practical.

Employers and employees must have a reasonable opportunity to negotiate in good faith and reach agreement over the timing and length of breaks.

An employee can take a representative (such as a family member or a union representative) along during a discussion with their employer if they're not comfortable addressing the issue on their own.

The employer or employee can seek mediation assistance if they're having trouble reaching agreement. When agreement is reached between an employer and employee, this should be recorded in writing and followed.

Good practice for determining when breaks are provided takes into account:

- how long the employee's work period is
- the nature of the employee's work

- any health and safety issues related to the work, eg fatigue
- the time of day or night that the employee's work period starts, eg matching meal breaks to normal meal times where possible
- the interests of the employee, eg to allow enough time for rest, refreshment and to take care of personal matters
- the employer's operational environment or resources, eg does the employer need employees to take their breaks in stages or according to a roster, in order to continue production or services, or do all employees need to take their breaks at the same time. The minimum length of breaks required by law is 10 minutes for rest breaks and 30 minutes for meal breaks.

Calculating rest break payments

- Employees should not be financially disadvantaged when rest breaks are taken.
 - Employers should have no difficulty working out the value of rest breaks for employees who are paid a standard hourly rate.
 - Employers must ensure that employees working on variable rates (such as piece rates) are paid for their breaks. A rate of pay for breaks can be calculated based on the rate of pay employees will have been receiving at the time of the break.
- This statement sets out the Labour Inspectorate's position on how rest break payments should be dealt with to make sure the requirements of the Employment Relations Act 2000 are met.

Agreements and Policies

An employment agreement or workplace policy can give an employee extra rest and meal breaks, either paid or unpaid, above the minimum required by law.

If meal breaks are unpaid, an employer can agree that meal breaks will be for a minimum length (e.g. the minimum length that employers are required to provide is 30 minutes) but employees can take a longer break if they want to if the employee and employer agree to this.

An employee still needs to work their agreed total hours of work if they take a break longer than the agreed minimum (eg the employee could take up to an hour and add the extra work time on to the end of their working day).

An employment agreement provision that removes or reduces an employee's minimum entitlement to take breaks or to compensatory measures, has no effect and can't be enforced by an employer.

Infant Feeding

Employers are required to provide appropriate facilities and breaks for employees who wish to breastfeed (including expressing breast milk) so far as is reasonable and practicable in the circumstances.

Employers can take into account their operational environment and resources when deciding if it is reasonable and practicable to provide these facilities and breaks.

These breaks must be provided in addition to rest and meal breaks. However breaks for infant feeding are unpaid, unless the employer agrees to pay the employee.

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