



DIVISION OF LABOR STANDARDS ENFORCEMENT

REST PERIODS

Employers are required to give each employee at least a ten (10) minute paid break for each four (4) hours worked (or major fraction of four (4) hours). If an employee works three and one-half (3 ½) hours or less, it is not required that a break be given to that employee. Breaks should be given to employees as near to the middle of the four (4) hours segment of time as is practical. If an employer fails to provide a rest period, the employer must pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. This additional hour is not counted for purposes of overtime calculations. (See appropriate Industrial Welfare Commission (IWC) Order)

In the case of *Murphy v. Cole*, the California Supreme Court held that the remedy for meal and rest period violations of "one additional hour of pay" under Labor Code section 226.7 is a wage subject to a three-year statute of limitations. Accordingly, a claim must be filed within three (3) years of the alleged rest period violation.

MEAL PERIODS

An employer may not employ an employee for a work period of more than five hours per day without providing a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee." (See Labor Code § 512(a))

Employees are entitled to a minimum of a thirty (30) minute duty-free meal period for every five (5) hours worked. A second meal period is required if an employee works more than ten (10) hours per day unless the work period is less than twelve (12) hours, then the second meal period may be waived by mutual consent. Meal periods are not required to be paid, providing that the meal period is "duty-free". For a meal period to be "duty-free" the employer cannot require that an employee perform any duties while on a meal break. (*Bono Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968, 38 Cal.Rptr2d 549 and *Madera POA v. City of Madera* (1984) 36 Cal.3d 403) An "on-duty" meal period is only permitted when the nature of the work prevents an employee from being relieved of all duties and when, by written agreement between the parties, an on-the-job paid meal period is agreed to. If an employer requires an employee to remain at the work site or facility during the meal period, the meal period must be compensated. If an employer fails to provide a legally required meal period, the employer must pay the employee one (1) additional hour of pay at the employee's regular rate of pay per day. This additional hour is not counted for purposes of overtime calculations. (See appropriate IWC Order and Labor Code § 226.7)

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BREAK TIME TO EXPRESS BREAST MILK

Every employer, including the state and any political subdivision, must provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission need not be paid. The employer shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section. An employer is not required to provide an employee break time for purposes of lactating if to do so would seriously disrupt the operations of the employer. (See Labor Code § 1030)

Failure to comply with this requirement may result in civil penalties.

If you feel your employer is not providing you with adequate break time and/or a place to express milk as provided for in Labor Code section 1030, you may file a report with the DLSE Bureau of Field Enforcement (BOFE) at the BOFE office nearest your place of employment. See <http://www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm>.

The DLSE may, after an inspection, issue to an employer who violates any provision of this chapter, a civil citation (\$100.00 for each violation) that may be contested in accordance with the procedure outlined in [Labor Code Section 1197.1 \(Labor Code Section 1033\)](#).

In addition, any employee who is a victim of retaliation for either asserting a right to lactation accommodation or for complaining to the DLSE about the failure of an employer to provide this accommodation may file a retaliation claim with DLSE pursuant to [Labor Code Section 98.7](#).