

Meal Breaks and Rest Breaks

YOUR LEGAL RIGHTS

1. Does my employer have to give me meal breaks?

Yes. Nearly all non-exempt employees are entitled to a thirty (30) minute meal break for every five (5) hours worked. You may voluntarily give up your meal break, but only if you work six (6) hours or less. If you work for ten (10) hours, you are entitled to two thirty (30) minute meal breaks. You can give up the second meal break, but only if you work less than twelve (12) hours, and you actually took the first meal break. Your employer has to make sure that you actually receive the correct number of meal breaks and record those breaks in your time records,

If you work more than 5 hours and do not get a meal break, your employer has to pay you premium pay. That premium pay is an extra hour of wages for every day you miss a meal break. The premium pay is *in addition* to the time you are forced to stay on duty during the meal break. There is a maximum of one hour of meal break premium pay per day, so you cannot recover two hours of premium pay, even if you are denied two legally required meal breaks in a single day.

2. Does my employer have to give me breaks for rest during work?

Generally yes. California law says that all non-exempt employees must be “authorized and permitted” to take a ten (10) minute rest break for every four (4) hours worked, or for working a “major fraction” of four hours. (A “major fraction” of four hours has been interpreted to mean two hours.) Also, employees must work at least 3.5 hours in a day to be entitled to any break at all. Therefore, you should get one 10 minute break if you work between 3.5 and 6 hours, two ten minute breaks if you work between 6 and 10 hours, and three 10 minute breaks if you work between 10 and 14 hours. Unlike meal breaks, which the employer must *require* that you take, the employer only has to “authorize” rest breaks, meaning that it must allow you time to take these breaks but you have some responsibility to make sure you actually get the time away from your duties. Also unlike meal breaks, your employer is not required to record your rest breaks in the time records.

Your employer has to pay you premium pay if you work more than four hours (or a “major fraction” of four hours) and you do not get a rest break. That premium pay is an extra hour of wages for every day you miss a rest break, and it is *in addition* to the time you are forced to stay on duty during the rest break. There is a maximum of one hour of rest break premium pay per day, so you cannot recover two hours of premium pay if you are denied two legally required rest breaks in a single day. However, you can recover one hour for rest breaks *and* one hour for meal breaks (see #1 above) if you are denied both.

3. Does my employer have to pay me for my meal or rest breaks?

Your employer does not have to pay you for meal breaks during which you are completely relieved of duty for at least thirty (30) consecutive minutes. On the other hand, you must be paid for any meal or rest break that lasts less than thirty (30) minutes.

4. Does my employer have to give me a meal break even if I am allowed to sleep during part of my workday?

If you are on duty for less than twenty-four (24) consecutive hours, all of those hours (except meal breaks as described above) are paid hours even if you are permitted to sleep during those hours. If you are on duty for 24 hours or longer, your employer is allowed to exclude your meal break, as well as sleep time up to eight (8) hours, from paid work time. However, if your employer does not furnish adequate sleep facilities or you regularly do not get an opportunity to sleep more than five (5) hours in a row, then you must be paid for the entire period of potential sleep time.

Employees who live on the premises need only be compensated for time actually performing duties; sleep time is not paid to these employees.

5. Do these meal and rest break laws apply to every California worker?

Although these laws cover most employees in California, you are not entitled to these breaks and meals if you are exempt. An “exempt” employee is a non-union employee who is not covered by certain laws because of the kind of work that employee performs. Generally, the only type of worker who is considered exempt is one who makes a fairly large salary, has a lot of responsibility within the company, and has a lot of independence to make decisions that affect the way the company is run. If you think you may be an exempt employee, see our Fact Sheet titled “**Exemptions from Overtime Pay**” for further information.

6. What happens if my employer fails to give me a break required by law?

If you are not given a rest break or a meal break and your employer refuses to pay the premium pay, you can file a claim with the California Division of Labor Standards Enforcement (also known as the “Labor Commissioner”) to require the breaks and/or recover the money. You can recover your premium pay for up to three years before the date of your Labor Commissioner claim. To help with your case, you should keep your own written records of every day you are not given a meal or rest break.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your situation.

For further information about your employment rights, please call:

The Workers’ Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers’ Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

