

May 2019

Position Statement – Paid Rest Breaks

The law requires employers to provide paid rest breaks (and unpaid meal breaks) for their employees. Employees are entitled to breaks based on the number of hours they work.

A Court of Appeal decision¹ in 2016 confirmed that paid rest breaks are required to be paid at the same rate for which the employee would be paid to work.

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.
- An Employment Court decision² clarified that an employer and employee may reach agreement for payment of rest breaks to be included in the employee's piece rate. In these cases, an employer is expected to be able to show that there was clear and unambiguous agreement for such an arrangement and how provision has been made in the piece rate to cover the requirement for paid rest breaks to be paid at the rate the employee works.

Employment Records

Employers must be able to show that rest breaks have been properly paid. This is likely to be achieved through their wage and time record keeping system. The Labour Inspectorate expects to see:

- the payments made for hours of work and rest breaks in an identifiable way so that it can be shown that the breaks have been taken and amount paid for the breaks.

Compliance

Labour Inspectors check that breaks are paid and provided for by employers. Penalties can be ordered for failures to comply with requirements for paid rest breaks and meal breaks.

Deductions from wages that employees have formally agreed to in exchange for the provision of accommodation or other goods or services by their employer can be included for the purposes of assessing compliance with the Minimum Wage Act 1983.

¹ Lean Meats Oamaru Limited v NZ Meat Workers and Related Trade Unions Incorporated [2016] NZCA 495

² Ovation New Zealand Limited v The New Zealand Meat Workers and Related Trades Union Incorporated [2018] NzEmpC 151



Exceptions

There are few exemptions to the requirement to provide paid rest breaks (and unpaid meal breaks). The exemptions apply to employers engaged in essential services or New Zealand's national security but even then, only in certain circumstances. Where an employer is exempt, the employee and employer can agree to provide for breaks in a different manner to those set by the law. If they are unable to agree then the employee is entitled to compensation.

Further information

Information on rest and meal breaks can be found at www.employment.govt.nz.

This Position Statement updates and replaces the previous Labour Inspectorate Position Statement on Paid Rest Breaks, dated January 2017.