

# THE LABORING OAR

## How To Navigate Your Way Through Employment Law

Welcome to the first monthly e-newsletter bringing you up-to-date information on employment law and issues. The newsletter will focus on both new laws as they are passed, and common areas of concern for employers and executives. This month's column addresses meal and rest periods for employees in California.

## Meal and Rest Periods for California Employees

By Olivia Goodkin, Esq.

### Q. Are all employees entitled to a meal period?

A. Generally, yes. The law requires that employers allow at least a 30 minute unpaid meal period for a work period of more than five hours. If an employee works no more than six hours, the meal period may be waived by mutual consent of the employer and employee. I encourage you to obtain the employee's consent to waive the meal period *in writing*.

### Q. What are the exceptions to the meal period rules?

A. There are exceptions for employees in the motion picture industry, or when the nature of the work prevents an employee from being relieved of all duty during a meal period. If an employee must take a meal period without leaving his or her work area (an example would be a security guard at the front desk of a building), the meal period is paid, whether or not the employee works during the meal period.

### Q. My employee wants to work through the meal period in order to leave 30 minutes early. Is that allowed?

A. No. The only exception would be if the nature of the work prevents the employee from being relieved of duty. In addition, there must be a written agreement with the employee that the on-the-job meal period is agreed to, and that the employee has the right, at any time, to revoke the agreement in writing.

### Q. What are the rules regarding rest periods?

A. Non-exempt employees must be given a 10 minute paid rest period for every four hours of work, ideally as close to the middle of the four hour period as possible. No rest period is required if the employee's total daily work time is less than three and one-half hours. There are exceptions to the rest period requirements in the construction, drilling, logging and mining industries, for employees of 24-hour residential facilities, and for certain performers. The 10 minute break starts when the employee reaches the rest area. Employers can require employees to remain on the premises for their rest periods, however, the employer must also provide suitable resting facilities in an area other than bathroom facilities.

### Q. Are employees allowed to take extra breaks for smoking or using the toilet facilities?

A. There are no extra rest periods required for smokers. On the other hand, employees may take bathroom breaks apart from their rest periods. If employees choose to use the bathroom during their rest periods, they may not extend their rest periods by doing so. Notwithstanding these rules, employers have the right to reasonably



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limit the amount of time an employee may be away from his or her workstation.

**Q. Are there penalties for violating meal or rest period rules?**

A. Yes. The employer may be fined one hour of the employee's wage for every meal period and every rest period missed.

**Q. Help! How can I avoid liability when I cannot supervise every employee and keep track of when rest periods are taken?**

A. For employees who sign in and out (as opposed to punching a clock), I recommend adding a statement at the bottom of the time record for the employee to sign, verifying that the time records are accurate, and that the employee has taken all rest periods mandated by the law. The time records could then be used to assist in the defense of a claim that rest periods were not taken. However, if an employer knows that the employee is not taking rest periods despite being told to do so, the employer's recourse is to discipline the employee by warning him or her that he must abide by the company's rules. If the problem persists, the employer should consider termination in order to avoid a claim by the employee or Labor Commissioner for failure to provide rest periods.

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