

## **New York Employers' Obligations For Employee Breaks And Meal Periods**

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As the state and federal Departments of Labor enforce employee rights regarding breaks and meal periods, it is important for employers to familiarize themselves with applicable requirements.

### **Break Periods**

Though most employees think otherwise, neither state nor federal law requires employers to provide employees rest breaks. However, if an employer chooses to offer rest breaks, any such breaks lasting 20 minutes or less must be included in the employees' hours worked.

### **Meal Periods**

New York law specifically requires meal periods for all employees. Under New York's Labor Law, factory and manufacturing employers must give their employees 60 minutes for a noontime meal (between 11 a.m. and 2 p.m.). Mercantile establishments (generally places where merchandise is offered for sale) and other non-factory employers must provide employees with 30 minutes for a noontime meal.

In addition, employers must offer an additional meal period to employees who work a shift that begins before 11 a.m. and continues after 7 p.m. This second meal period must be at least 20 minutes long and occur between 5 and 7 p.m.

If an employee works a shift lasting more than six hours that begins between 1 and 6 a.m., the employee is entitled to a meal period at a time mid-way between the beginning and end of the

employee's shift. If employed in a factory or other manufacturing setting, the meal period must be 60 minutes long. If employed by a mercantile establishment or other non-factory employer, the meal period must be 45 minutes long.

### **Meal Period Guidelines**

Despite these New York Labor Law provisions, the state Department of Labor interpretive guidelines provide that the Department will, as a matter of course, permit all employers to provide shorter meal periods of not less than 30 minutes, so long as there is no indication of hardship to employees. These guidelines apply to all employees, including white collar management staff.

Moreover, where only one person is on duty or is the only person employed in a specific occupation, the employee may eat on the job without being relieved, where the employee voluntarily consents to the arrangement. With this very limited exception, employees may not waive their right to a meal period.

Employers do not have to pay employees for their meal period breaks, as long as the meal period qualifies as a bona fide meal period. To be bona fide, the meal period must meet the following three conditions: (1) the period generally must be 30 minutes or longer; (2) the employee must be completely relieved of his or her duties for the purpose of eating a regular meal; and (3) the employee must be allowed to leave his or her workstation--but not necessarily the employer's

premises or worksite--and must be substantially relieved from his or her duties during the meal period.

Employers may apply to the commissioner of the state Department of Labor for a shorter meal period time. If granted, the commissioner's permit must be in writing and conspicuously posted in the main entrance of the employer's place of business. While the commissioner has the discretion to grant a waiver, she also retains the right to revoke the permit at any time.

Employers must be cognizant of these break and meal period rules to ensure compliance with state and federal law, and to avoid conflict in the event of a Department of Labor audit.

The information contained in this column is not a substitute for professional counseling or advice.

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