

EMPLOYMENT RELATIONS AMENDMENT ACT; REST BREAKS AND MEAL BREAKS, DUTIES OF EMPLOYERS AND HOW THEY IMPACT UPON TRANSPORT EMPLOYEES.

We note that enquiries from members have questioned the relationship between the Worktime Rule and the revised Employment Relations Act rest break provisions. What has added to that lack of clarity is the fact that the new provisions are not uploaded to the Employment Relations Act itself and this is noted on Legislation NZ website. Consequently the link we provided didn't give members the detail they needed. We will try to rectify that situation; Firstly, we have the advice from Employment NZ's own website.

"Changes in effect on 6 May 2019

— The right to set rest and meal breaks will be restored, the number and duration of which depends on the hours worked. For example, an eight-hour work day must include two 10-minute rest breaks and one 30-minute meal break, while a four-hour work day must include one 10-minute rest break.

Rest breaks benefit workplaces by helping employees work safely and productively. Employers must pay for minimum rest breaks but don't have to pay for minimum meal breaks. Employers and employees will agree when to take their breaks. If they cannot agree, the law will require the breaks to be in the middle of the work period, so long as it's reasonable and practicable to do so.

Some limited exemptions may apply for employers in specified essential services or national security services."

However, to make things abundantly clear we have sourced the core legislation and set out the specified rest and meal break requirements. 69ZE below provides for limited opportunity for agreement between the employer and employee when to take breaks. In general, the specified breaks can fit within the normal road transport employment scheduled workday.

Amendments to Part 6D (rest breaks and meal breaks) These will be included in the core Act in due course.

69ZC Interpretation

In this Part, unless the context otherwise requires, *work period*—

(a) means the period—

(i) beginning with the time at which, in accordance with an employee's terms and conditions of employment, an employee starts work; and

(ii) ending with the time at which, in accordance with an employee's terms and conditions of employment, an employee finishes work; and

(b) includes all authorised breaks (whether paid or not) provided to an employee or to which an employee is entitled during the period specified in paragraph (a).

69ZD Employee's entitlement to, and employer's duty to provide, rest breaks and meal breaks

Entitlement and duty

(1) An employee is entitled to, and the employee's employer must provide the employee with, rest breaks and meal breaks in accordance with this Part.

Work period between 2 hours and 4 hours

(2) If an employee's work period is 2 hours or more but not more than 4 hours, the employee is entitled to one 10-minute paid rest break.

Work period between 4 hours and 6 hours

(3) If an employee's work period is more than 4 hours but not more than 6 hours, the employee is entitled to—

(a) one 10-minute paid rest break; and

(b) one 30-minute meal break.

Work period between 6 hours and 8 hours

(4) If an employee's work period is more than 6 hours but not more than 8 hours, the employee is entitled to—

(a) two 10-minute paid rest breaks; and

(b) one 30-minute meal break.

Work period over 8 hours

(5) If an employee's work period is more than 8 hours, the employee is entitled to the rest breaks and meal breaks in accordance with subsections (6) and (7).

(6) During the work period of 8 hours, the employee is entitled to—

(a) two 10-minute paid rest breaks; and

(b) one 30-minute meal break.

(7) During the work period beyond 8 hours (the *subsequent period*), the employee is entitled to the following:

(a) if the subsequent period is 2 hours or more but not more than 4 hours, to one 10-minute paid rest break:

(b) if the subsequent period is more than 4 hours but not more than 6 hours, to—

(i) one 10-minute paid rest break; and

(ii) one 30-minute meal break:

(c) if the subsequent period is more than 6 hours but not more than 8 hours, to—

(i) two 10-minute paid rest breaks; and

(ii) one 30-minute meal break.

69ZE Timing of rest breaks and meal breaks

Timing of breaks as agreed

(1) If an employee and employer have agreed on the times at which the employee is to take rest breaks and meal breaks during the employee's work period, the rest breaks and meal breaks are to be taken at those times.

Timing of breaks in absence of agreement

(2) In the absence of an agreement, the rest breaks and meal breaks are to be taken in accordance with the applicable provision in subsections (3) to (7).

Work period between 2 hours and 4 hours

(3) If section 69ZD (2) applies, an employer must, so far as is reasonable and practicable, provide the employee with the rest break in the middle of the work period.

Work period between 4 hours and 6 hours

(4) If section 69ZD (3) applies, an employer must, so far as is reasonable and practicable, provide the employee with—

(a) the rest break one-third of the way through the work period; and

(b) the meal break two-thirds of the way through the work period.

Work period between 6 hours and 8 hours

(5) If section 69ZD (4) applies, an employer must, so far as is reasonable and practicable, provide the employee with—

- (a)** a rest break halfway between the start of work and the meal break; and
- (b)** the meal break in the middle of the work period; and
- (c)** a rest break halfway between the meal break and the finish of the work period.

Work period over 8 hours

(6) If section 69ZD (5) and (6) apply, an employer must, so far as is reasonable and practicable, provide the employee with—

- (a)** a rest break halfway between the start of work and the meal break; and
- (b)** the meal break in the middle of the work period; and
- (c)** a rest break halfway between the meal break and the finish of the work period.

(7) If section 69ZD (5) and (7) apply, an employer must, so far as is reasonable and practicable, provide the employee with the breaks as follows:

- (a)** if the subsequent period is 2 hours or more but not more than 4 hours, the rest break in the middle of the subsequent period:
- (b)** if the subsequent period is more than 4 hours but not more than 6 hours, —
 - (i)** the rest break one-third of the way through the subsequent period; and
 - (ii)** the meal break two-thirds of the way through the subsequent period:
- (c)** if the subsequent period is more than 6 hours but not more than 8 hours,—
 - (i)** a rest break halfway between the start of the subsequent period and the meal break; and
 - (ii)** the meal break in the middle of the subsequent period; and
 - (iii)** a rest break halfway between the meal break and the finish of the subsequent period.

69ZEA Exemption from requirement to provide rest breaks and meal breaks

(1) An employer is exempt from the requirement to provide rest breaks and meal breaks in accordance with section 69ZD (1) if subsection (2) or (3) applies.

(2) This subsection applies if—

(a) the employer is engaged in the protection of New Zealand’s national security; and

(b) continuity of service is critical to New Zealand’s national security; and

(c) the employer would incur unreasonable costs in replacing an employee, employed in the protection of New Zealand’s national security, during the rest breaks and meal breaks—

(i) with another person who has sufficient skills and experience; and

(ii) without compromising New Zealand’s national security.

(3) This subsection applies if—

(a) the employer is engaged in an essential service; and

(b) continuity of service or production in the essential service is critical to the public interest, including (without limitation) services affecting public safety; and

(c) the employer would incur unreasonable costs in replacing an employee, employed in the essential service, during the rest breaks and meal breaks—

(i) with another person who has sufficient skills and experience; and

(ii) without compromising public safety.

(4) If subsection (2) or (3) applies, the employer and employee may agree that any rest breaks and meal breaks are to be taken in a different manner (including the number and timing of breaks) than specified in this Part.

69ZEB Compensatory measures

(1) If the employer and employee are unable to reach agreement under section 69ZEA (4), an employee is entitled to, and the employer must provide the employee with, compensatory measures.

(2) In this section, *compensatory measure*—

(a) means a measure that is reasonable and designed to compensate an employee for a failure to provide rest breaks or meal breaks in accordance with section 69ZD (1); and

(b) may include (without limitation)—

(i) a measure that provides the employee with time off work at an alternative time during the employee’s work period (for example, by allowing a later start time, an earlier finish time, or an accumulation of time off work that may be taken on 1 or more occasions); or

(ii) financial compensation; or

(iii) both time off work at an alternative time and financial compensation.

(3) For the purposes of subsection (2), —

(a) if the compensatory measure provided is time off work at an alternative time, —

(i) the employee must be provided with at least an equivalent amount of time off work (that is, the same amount of time that the employee would otherwise have taken as a rest break or meal break); and

(ii) the time off work at an alternative time must be provided on the same basis as the rest break or meal break that the employee would otherwise have taken:

(b) if the compensatory measure provided is financial compensation, that financial compensation, at a minimum, must relate to the amount of time that the employee was required to work but would otherwise have taken as a rest break or meal break, and must, —

(i) in the case of an employee paid at variable rates during a work period, be calculated at the employee's average rate of pay in the relevant work period; or

(ii) in the case of any other employee, be calculated at the employee's ordinary rate of pay:

(c) if the compensatory measure includes both time off work at an alternative time and financial compensation, the total amount of alternative time plus time for which payment is made must be at least equivalent to the amount of time that the employee would otherwise have taken as a rest break or meal break.

(4) For the purposes of subsection (3) (c), any financial compensation must, —

(a) in the case of an employee paid at variable rates during a work period, be calculated at the employee's average rate of pay in the relevant work period; or

(b) in the case of any other employee, be calculated at the employee's ordinary rate of pay.

Section 69ZG amended (Relationship between Part and employment agreements)

Replace [section 69ZG\(2\) and \(3\)](#) with:

(2) An employment agreement that excludes, restricts, or reduces an employee's entitlements under section 69ZD or 69ZE or fails to comply with section 69ZEA or 69ZEB—

(a) has no effect to the extent that it does so; but

(b) is not an illegal contract under subpart 5 of Part 2 of the Contract and Commercial Law Act 2017.