

## **RE EMPLOYMENT RELATIONS AMENDMENT ACT 2018 CHANGES TO REST AND MEAL BREAK ENTITLEMENTS – MAY 2019**

NZTA has provided the following explanation on how the new Employment Relations Act amendments to the rest and meal break requirements impact on transport operators. The Agency has published information on its [website](#) for commercial transport operators and drivers to improve understanding of the impact of the legislative changes and how they relate to the worktime provisions of the Worktime and Logbooks Rule. A comprehensive Q & A section is also included

The information below is entirely sourced from NZTA and relates to the changes that will come into effect on 6 May 2019 regarding rest and meal break entitlements. This is a more in-depth explanation that goes beyond the information RTF provided originally and is driven by the need to cover off the controversy around rest breaks that has arisen in some parts of the passenger transport sector.

The Agency will continue to update its webpage as new information becomes available. If members have any specific questions related to the Employment Relations Amendment Act, please get in touch with Employment New Zealand on 0800 20 90 20.

Members should note that this information is available on the link here: [Transport Agency website](#).

### ***Information for drivers and employers on changes to Employment Relations Amendment Act 2018 (the Act) rest and meal break entitlements***

*The Employment Relations Amendment Act 2018 (the Act) introduced several employment law changes that aim to improve fairness in the workplace and deliver decent work conditions and fair wages.*

*As part of this Act, on **6 May 2019** changes will come in to effect that relate to the commercial transport sector. Below is some information for drivers and employers about what these changes mean.*

*Greater detail about the Act is available on the [Employment New Zealand website\(external link\)](#). If you have any questions about the Employment Relations Amendment Act, call Employment New Zealand on 0800 20 90 20.*

Read the following questions and answers for drivers and employers on changes to the Act regarding rest and meal break entitlements.

## **Questions and answers**

### **What is the Act asking employers of drivers to do?**

On 6 May 2019, the right to set rest and meal breaks will be restored for all employees, including transport drivers. Prior to the 6 May 2019 change, the Employment Relations Act required that employees receive reasonable and appropriate rest breaks, without outlining the number, duration or position within the work day. The changes are being made to provide greater clarity of rest and meal break entitlements and to benefit workplaces by helping employees work safely and productively.

The changes mean that employees will be entitled to paid minimum rest breaks (10-minute break) and unpaid minimum meal breaks (30-minute break) throughout their work day. Employers and employees will agree when to take their breaks. If they cannot agree the law sets out when breaks should be taken, so long as it's reasonable and practical to do so.

### **What does this mean exactly?**

Employees will be entitled to take a certain number of rest breaks (10-minute paid break) and meal breaks (30-minute unpaid break) during their shifts. The number of rest and meal breaks that employees are entitled to is dependent on the length of a shift.

Breaks are generally for attending to personal matters and is a break from work-related tasks. This could be eating, drinking, going to the bathroom, or taking a mental break. When an employee takes these breaks, they need to be able to reasonably attend to these personal matters.

Here are some examples of what this means:

1. If a driver works more than six hours but not more than eight-hours in a work day, they are entitled to two 10-minute rest breaks and one 30-minute meal break.
2. If a driver works more than four hours but not more than six hours in a work day they are entitled to one 30-minute break and one ten-minute break.
3. If a driver works more than two hours but not more than four hours in a work day they are entitled to one 10-minute rest break.
4. If a driver works over eight hours, they may be entitled to further breaks for the subsequent period beyond eight hours. For example, if they work a ten-hour work day the driver would be entitled to three 10-minutes breaks and one 30-minute break.

### **When do breaks need to be taken?**

Employers and drivers can agree when rest and meal breaks are to be taken. However, these breaks will still need to adhere to the requirements under the Land Transport Rule: Work Time and Logbooks 2007. This means drivers must have a 30-minute break after a maximum of five and a half hours of driving. This break can count as the 30-minute meal break that is required under the Employment Relations

Amendment Act.

*It is important to note that breaks do not have to be provided every two hours. Breaks can be taken when practical for the driver and the business, provided that all parties agree. For example, a driver working from 6am to 2pm could take an initial rest break at 9:30am, a meal break at 11:30am (adhering to Land Transport rule requirement) and then, a final rest break at 1pm. Breaks can be quite flexible if both parties agree to it.*

**What happens if neither the driver nor the employer can reach an agreement?**

*If the employer and employee cannot agree to the timing of rest and meal breaks, then the employer must provide rest and meal breaks under the prescribed times in the Act. Under these prescribed times, employees can be expected to take breaks nearly every two hours unless it is not reasonable or practicable to do so.*

*What is reasonable and practicable is based on industry needs and the nature of the employee's work. For example, if a service delivery route cuts through a driver's intended break, it may not be reasonable for that break to occur when there is an expectation to get passengers or equipment to a location at a certain time. So, if service demands mean that a break is postponed, this would likely be considered reasonable.*

*At the extreme, depending on the nature of the employee's work and industry needs, it could be reasonable for the rest break to be taken adjacent to the next meal break. The length of time a break is postponed will depend on particular circumstances.*

*If parties are having difficulty agreeing to rest and meal breaks, they can access [mediation services through the Ministry of Business, Innovation and Employment \(MBIE\)\(external link\)](#), or by calling the Employment New Zealand helpline on 0800 20 90 20.*

**Why are these changes important for the land transport sector?**

*Driver fatigue is a significant safety concern for the sector. The entitlements to rest and meal break breaks under the Employment Relations Amendment Act (the Act) will contribute to reducing the risk of driver fatigue.*

**What does this mean for the current Land Transport Rule: Work Time and Logbooks 2007?**

*The Land Transport Rule: Work Time and Logbooks 2007 currently requires drivers to take a 30-minute break after a maximum of five and a half hours of work time. Drivers will still need to do this after changes are introduced on the 6th of May 2019.*

*The breaks provided under the Employment Relations Amendment Act are an additional entitlement to drivers. However, the 30-minute break required under the rule can count as a 30-minute meal break required under the Act.*

*Breaks prescribed under the Employment Relations Amendment Act will be enforced by the Ministry of Business, Innovation and Employment. The requirements under the Rule are enforced by the New Zealand Transport Agency, and the Police.*

Below is an example of what a typical cumulative work day might look like for a driver under our current Rule:

[A cumulative work day \[PDF, 146 KB\]](#) means a period during which work occurs that does not exceed 24 hours and begins after a continuous rest period of 10 hours. In other words, a cumulative work day is a period of 13 hours or less in length dedicated to doing a job. The time outside those hours are dedicated to rest.

**Cumulative work day – Requirements under the Logbooks Rule**

Cumulative work day – Requirements under the Logbooks Rule						
Minimum 10 hours rest break	5½ hours work time	30 minute rest break	5½ hours work time	30 minute rest break	2 hours work time	Minimum 10 hours rest break

On the 6th of May, this cumulative work day will also include paid 10-minute breaks. Below is an example of the entitlements a driver can expect during a 13-hour shift after the 6th of May.

	Requirements under the Employment Relations Act (if all parties agree)	Requirements under the Employment Relations Amendment Act (if parties do not agree)
During a cumulative work day of 13 hours, drivers are entitled to:	<p>3x (paid) 10-minute rest break taken at agreed times throughout the shift and;</p> <p>2x (unpaid) 30-minute break provided after every 5 ½ hours of work (or earlier if agreed)</p>	<p>1x (paid) 10-minute break after first 2 hours, 45 minutes of a shift and;</p> <p>1x (unpaid) 30-minute break after first 4 hours, 45 minutes of a shift and;</p> <p>1x (paid) 10-minute break after first 6 hours, 45 minutes of a shift and;</p> <p>1x (unpaid) 30-minute break after first 8 hours, 45 minutes of a shift and;</p> <p>1x (paid) 10-minute break after first 11 hours of a shift</p>

**I drive for five hours each day – what does this mean for me?**

The Act states that if an employee works a shift between four to six hours, they are entitled to one 10-minute break and one 30-minute break. This means that if a driver works a five-hour shift, they are entitled to one 10-minute break and one 30-minute break.

***I'm a council-contracted bus operator and employ drivers - has there been consideration given to the financial impacts of the amendment to set rest and meal breaks?***

*A transport operator who holds a public transport service contract(s) with a regional council (including Auckland Transport) should discuss with the council the potential impact of implementing the new rest and meal break provisions and how to manage those impacts. This will include determining the potential financial impact of increased breaks and how any additional costs will be met. Costs may differ from operator to operator, unit to unit, and region to region.*

***I'm a self-employed truck driver – do I need to take more breaks?***

*If truck drivers are operating as a self-employed contractor, the Employment Relations Amendment Act will not apply to them and they will only need to adhere to the Land Transport Rule: Work Time and Logbooks 2007. However, if a company is contracted to provide services and employs a truck driver, that driver will be entitled to rest and meal breaks.*

*If drivers are not sure about their status as an employee or contractor, further information can be found here on the [Employment New Zealand website\(external link\)](#).*