

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
320 West 4th Street, Suite 430
Los Angeles, CA 90013
(213) 897-1511



ANNE STEVASON, Acting Chief Counsel

February 22, 2002

Raymond Buendia, Esq.
P.O. Box 390433
San Diego, CA 92149-0433

Re: **Rest Period Requirements**

Dear Mr. Buendia:

This letter is in response to your letter of February 15, 2002, directed to the Division Legal Section. You ask two questions regarding the enforcement policy of the DLSE with regard to rest periods.

First you ask, are the "net" ten minutes for any four-hour period required to be consecutive. The answer is yes.

As you know, the IWC Orders state, at Section 12(A):

"Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose daily work time is less than three and one-half hours (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

The language of the IWC Order clearly indicates that there is to be "a" rest period, not a succession of rest "periods". The DLSE has consistently and historically interpreted "...[T]he word "net" as used in the Orders as obviously intended to restrict the employer from practices which would limit the rest period and, at the same time, is designed to insure that the employee receives the rest which the Commission has deemed necessary." (See DLSE Opinion Letter 1995.05.28 and 1995.06.02, emphasis added.) In other words, there must be a net 10 minutes of rest provided in each "work period" and the rest period must be, as the language implies, duty-free. This requirement would, of course, preclude the employer from using time during which the employee is required to change from one work station to another as a rest period unless the time allotted is, in fact, a net 10 minutes and is, as far as is practicable, in the middle of the work period.

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In addition, at Section 13(B) of the Orders, the IWC has provided that "[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours." This requirement clearly indicates that the IWC intended that the "net" ten minutes was to be available in a "rest area" if the employee so desired. Such a requirement would prohibit the use by your client of time consumed in the process of "moving from one work position to another" to meet the "net" rest period requirements of the Orders.

The second question you pose concerns the requirement that, insofar as is practicable, the rest period is to be in the middle of the work period. You ask whether there are circumstances that the DLSE "accepts based on practicalities which will not render a rest period not in the middle of each work period as a violation?"

We don't completely understand your question since the use of the word "practicable" would seem to address your concern.

As the language of the Orders state, the rest period is to be "in the middle of each work period" "insofar as practicable". Obviously, the language contemplates that the IWC foresaw situations where the rest period could not practically be authorized in the middle of the work period; else there would be no reason for the use of the word "practicable". There may be situations which arise when manning problems would make it impracticable to place the rest period in the exact "middle of the work period"; but the employer must then insure that it is, insofar as is practicable, near the middle of the work period.

In your factual scenario you state that your client rotates the employees from work positions to relieve the employees from boredom and work burdens. We would like to point out that while it may be true that relieving the employee from boredom and work burdens is helpful to the employees, keeping the employees alert would also inure to the benefit of the employer.

Thank you for your interest in California labor laws.

Yours truly,

Anne Stevason
Acting Chief Counsel

Raymond Buendia, Esq.

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c.c. Arthur Lujan, State Labor Commissioner
Thomas Grogan, Chief Deputy Labor Commissioner
Assistant Chiefs
Regional Managers
Legal Sections