

TITLE 8. INDUSTRIAL RELATIONS  
Division 1. Department of Industrial Relations  
Chapter 6. Division of Labor Standards Enforcement  
Subchapter 11. Meal and Rest Periods

§13700. Meal and Rest Periods

(a) Definition. As used in this section, “work period” means that period of time during which an employee is subject to the control of the employer. A work period begins at the time an employee begins work and ends at the time the employee either takes a meal period or stops work for the day. A new work period begins each time an employee resumes work after taking a meal period.

(b) Requirement to Provide Meal Periods

(1) An employer shall be deemed to have provided a meal period to an employee in accordance with Labor Code Section 512 if the employer:

- a. Makes the meal period available to the employee and affords the opportunity to take it; and
- b. Posts the applicable order of the Industrial Welfare Commission; and
- c. Maintains accurate time records for covered employees, as required by the posted order;

(2) As a further precaution beyond the criteria required under (b)(1), an employer may inform an employee in writing of the circumstances under which he or she is entitled to a meal period in a way that permits the employee to acknowledge in writing that he or she understands those rights.

(c) Beginning of a Meal Period

(1) Employment of less than 6 hours per day

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. If the total work hours per day of the employee are no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

(2) Employment of more than 6 hours, but less than ten hours, per day.

Unless provided otherwise by an applicable order of the Industrial Welfare Commission, a meal period as required by Labor Code Section 512(a) may begin before the end of the sixth hour of the work period.

- a. An employer may not require an employee to begin a meal period after the end of the sixth hour of work, except as provided in Labor Code sections 512 (b) or (c).
- b. If an employee requests a meal period to begin after the end of the sixth hour of work, an employer is not in violation of Labor Code 512 so long as the employee was provided the availability and opportunity to take a meal period before the end of the sixth hour of work.

(3) Employment more than ten hours but less than twelve hours per day

An employer may not employ an employee for more than 10 hours per day without providing a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(4) Examples

Example 1: A non-exempt employee begins work at 8:00 a.m. and works without a meal period until 1:00 p.m. The employer is required to provide a meal period to the employee at this point, as the employee will work more than 5 hours. However, if the employee's work will end no later than 2:00 p.m., the meal period may be waived by mutual consent of the employer and the employee.

Example 2: A non-exempt employee begins work at 8:00 a.m. and works without a meal period until 1:10 p.m. The employee has worked over 5 hours and is entitled to a meal period. The employee has not requested the meal period to begin after the end of the sixth hour of work. Without the employee's request, the employer may not require the meal period to begin after 2 p.m. as this would be after the end of the sixth hour.

Example 3: A non-exempt employee begins work at 8:00 a.m. and is provided a meal period, which begins at 10:30 a.m. The beginning of the meal period ends the initial work period of that employee's work. Upon returning to work at 11:00 a.m., the employee commences a new work period. The employee then works until 4:00 p.m. If the employee continues work beyond this point, the employer is required to provide another meal period to the employee, as the work period will exceed five hours. However, if the employee's work will end by 5:00 p.m., the second meal period may be waived by mutual consent of the employer and the employee.

Example 4: A non-exempt employee begins work at 8:00 a.m. and works without a meal period until 1:00 p.m. After taking a half-hour meal period, the employee returns to work at 1:30 p.m. and works until 6:30 p.m. If the employee works beyond this time, the employer is required to provide a second meal period to the employee. However, because the total hours worked by the employee in the day exceeds 10 hours, but not more than twelve, the second meal period may be waived by mutual consent of the employer and the employee as the first meal period was not waived.

(d) Penalty for Failure to Provide Meal or Rest Period. Any amount paid or owed by an employer to an employee under Labor Code section 226.7, subdivision (b), for failing to provide the employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission is a penalty and not a wage.

(e) Severability. If the application of any provision of this regulation, or any section, subsection, subdivision, sentence, clause, phrase, word or portion thereof should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

Authority: Sections 53, 54, 55, 59, 95, 98, 98.8, 1193.5, and 1198.4, Labor Code.  
Reference: Sections 226.7 and 512, Labor Code.