

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

TEXT OF MODIFIED REGULATION

[The Division of Labor Standards Enforcement has illustrated changes to the original text as follows:

Proposed Text Noticed for 45-Day Comment Period:

Regulation language originally proposed is underlined: original language.

Proposed Modified Text Noticed for First 15-Day Comment Period:

Deletions from the regulatory text initially proposed on January 14, 2005, are indicated by double strike-through: ~~deleted language~~. Additions to the regulatory text initially proposed on January 14, 2005, are indicated by a double underline: added language.

Proposed Modified Text Noticed for Second 15-Day Comment Period:

Deletions from the amended regulatory text are indicated by italics and bold in Times New Roman font with double strike-through: ~~*deleted language*~~. Additions to the amended regulatory text are indicated by italics and bold in Times New Roman font with double underline: *added language*.

Proposed Modified Text Noticed for Third 15-Day Comment Period in this Notice Issued July 7, 2005:

Deletions from the amended regulatory text are indicated by bold double strike-through: ~~**deleted language**~~. Additions to the amended regulatory text are indicated by bold dashed underline: **added language**.

§13700. Meal *and Rest* Periods

(a) Definitions. As used in this section:

(1) "Meal period" means ~~*the*~~ *a period of not less than 30 minutes as provided in Labor Code section 512(a), time during which an employee is relieved of all work duties and not subject to the control of the employer. In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.*

NOTE: This regulation does not address on-duty meal periods.

(2) "Provide" means to *supply or make available a the* meal period *available* to the employee and *give afford* the employee the opportunity to take the meal period.

(3) *"Workday" and "Day"* means any consecutive 24-hour period beginning at the same time each calendar day.

(4) *"wWork period"* means that period of time *during the day in which an employee is subject to the control of the employer by an employer. A work period which* begins at the time an employee begins commences work and ends at the time the employee *either takes a meal period or stops work* for the day, *excluding any time that is not hours worked (as defined in section 2 of the Industrial Welfare Commission wage orders).* A new work period begins each time an employee resumes work after taking a meal period.

(b) Requirement to Provide Meal Periods

(1) Pursuant to Labor Code Sections 554(a) and 512(c), the provisions of this regulation, **other than subsection (e)**, do not apply to: ~~(Aa)~~ a person employed in an agricultural occupation, as defined in Industrial Welfare Commission Wage Order 14; and ~~(Bb)~~ a person employed in the wholesale baking industry who is subject to an Industrial Welfare Commission Wage Order and who is covered by a valid collective bargaining agreement that provides for a 35-hour workweek consisting of five seven-hour days, payment of 1 and 1/2 the regular rate of pay for time worked in excess of seven hours per day, and a rest period of not less than 10 minutes every two hours.

(2) 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~~
- ~~Aa. Has informed the employee after the effective date of this regulation, either orally or in writing, of his/her right to take a meal period and the fact that he/she will suffer no retaliation for exercising this right. Posts the applicable order of the Industrial Welfare Commission; and~~
- ~~Bb. Gives Affords the employee the opportunity each day to take the meal period(s); and~~
- ~~Ce. Maintains accurate time records for covered employees, as required by Labor Code section 1174(d) and section 7, Records, of the Industrial Welfare Commission wage orders (with the exception of Wage Order 16 in which the Records provision is contained in section 6 and Wage Order 17, which does not have a provision for records) the posted order or otherwise establishes by a preponderance of evidence that the meal period was in fact actually provided to the employee; NOTE: While an employer may prove by a preponderance of evidence that a meal period was in fact actually provided to an employee, this regulatory section does not relieve an employer of any existing obligations to maintain accurate time records under Labor Code section 1174(d) and applicable sections of the Industrial Welfare Commission wage orders.~~

~~(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.~~

~~(3) Notwithstanding the criteria set out in subsections (b)(2)(A), (B), and (C), an employer may establish by a preponderance of evidence that a meal period was in fact actually supplied or made available to the employee and the employee was in fact actually given afforded the opportunity to take the meal period.~~

~~NOTE: While an employer may prove by a preponderance of evidence that a meal period was in fact actually supplied or made available to an employee and the employee was in fact actually given afforded the opportunity to take the meal period, this regulatory section does not relieve an employer of any existing obligations to maintain accurate time records under Labor Code section 1174(d) and applicable sections of the Industrial Welfare Commission wage orders.~~

(c) Illustrative table Regarding Meal Periods ~~Beginning of a Meal Period~~

<u>Hours into the work period</u>	<u>Example of time based on a work period that begins at 8 a.m.</u>	<u>Meal Period Event triggered</u>	<u>Exceptions</u>
<u>Prior to, and including, 5 hours</u>	<u>8:00 a.m. to 1:00 p.m.</u>	<u>None</u>	<u>Employer may provide a meal period</u>
<u>Anytime between 5 hours, 1 minute</u>	<u>1:01 p.m. to 1:59 2:00 p.m.</u>	<u>Employer must provide a 30 minute meal period if one has not already been</u>	<u>Employer and employee can mutually waive the employer's obligation to</u>

<u>and 6 hours, 59 minutes</u>		<u>provided</u>	<u>provide a meal period only if the employee's work period does not exceed 6 hours</u>
<u>Anytime between 6 hours, 1 minute and 10 hours</u>	<u>2:01 p.m. to 6:00 p.m.</u>	<u>No additional meal period</u>	<u>No additional waiver rights</u>
<u>Anytime between 10 hours, 1 minute and 12 11 hours, 59 minutes</u>	<u>6:01 p.m. to 8:00 7:59 p.m.</u>	<u>Employer must provide a second 30 minute meal period</u>	<u>Employer and employee can mutually waive the employer's obligation to provide a second meal period, but only if the first meal period was not waived and the employee's work period does not exceed 12 hours</u>

(d) Beginning of a Meal Period

(1) Work period Employment of less more than 5 hours, but no more 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 period per day of the employee are is no more than six hours, the employer's obligation to provide a meal period may be waived by mutual consent of both the employer and employee.

(2) Work period Employment of more than 6 hours, but less no more than ten hours, per day:

Unless otherwise provided otherwise by an applicable law order of the Industrial Welfare Commission, a meal period as required by Labor Code Section 512(a) must be provided may begin before the completion of the sixth hour of work period exceeds six hours the end of the sixth hour of the work period. The employer cannot waive its obligation to provide the meal period. However, an employee may initiate a request for approval from his/her employer to: (A) not take the meal period for that day or (B) take only a portion of the meal period for that day. The employer has the discretion to approve or deny the request. The employer's approval or denial of such a request is not a violation of the employer's duty to provide a meal 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) Work period Employment of more than ten hours but less no more 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 are no more than 12 hours, the employer's obligation to provide a 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 1:30 p.m. The employer is required to provide a meal period to the employee at this point, as the employee will has worked more than 5 hours. However, if the employee's work period 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 noon 4:10 p.m. The employee has not worked over 5 hours and is not 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.

Example 3: A non-exempt employee begins work at 8:00 a.m. The employee's regular work schedule is 8:00 a.m. to 4:30 p.m. with a 30 minute meal break. However, the employee wishes to leave by 4:00 p.m. that day in order to take his son to a doctor's appointment. The employee requests approval from his employer not to take the meal period that day in order to leave work 30 minutes earlier. After reviewing the operational needs of the company for that day, the employer approves the employee's request to not take his meal period. At 2:00 p.m., the employer provides a meal period to the employee by giving the employee the opportunity to take the meal period. However, the employee does not take his meal period. The employee leaves work at 4:00 p.m.

(e) 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 where applicable, order of the Industrial Welfare Commission is a penalty payable to the employee, without abatement or reduction, and not a wage.

NOTE: Pursuant to Labor Code section 98.6, an employer cannot retaliate against an employee for exercising his/her right to take a meal or rest period.

(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, 516, 1193.5, and 1198.4, Labor Code.

Reference: Sections 226.7 and 512, Labor Code.