

State of California
 Department of Industrial Relations

Labor Commissioner's Office | Rest Periods/Lactation Accommodation

Rest Periods/Lactation Accommodation

In California, the [Industrial Welfare Commission Wage Orders](#) require that employers must authorize and permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four hour work period, or major fraction thereof. The Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a "major fraction" of four." A rest period is not required for employees whose total daily work time is less than three and one-half hours. The rest period is counted as time worked and therefore, the employer must pay for such periods. With respect to the taking of rest periods, an exception exists under [IWC Order 5-2001, Section 12\(C\)](#) for certain employees of 24-hour residential care facilities who may have their rest period limited under certain circumstances. Another exception to the general rest period requirement is for swimmers, dancers, skaters, and other performers engaged in strenuous physical activities who shall have additional interim rest periods during periods of actual rehearsal or shooting. [IWC Order 12-2001, Section 12 \(C\)](#).

For employees in certain on-site occupations in the construction, drilling, logging and mining industries, the employer may stagger the rest periods to avoid interruption in the flow of work and to maintain continuous operations, or schedule rest periods to coincide with breaks in the flow of work that occur in the course of the workday. [IWC Order 16-2001, Section 11\(A\)](#) Additionally, for these employees rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, under such circumstances, the employer must make-up the missed rest period within the same workday or compensate the employee for the missed ten minutes of rest time at his or her [regular rate of pay](#) within the same pay period. [IWC Order 16-2001, Section 11\(B\)](#) Under [Order 16-2001](#), rest periods must take place at employer designated areas which may include or be limited to the employees immediate work area. See Question No. 9, below, for information on how to file a claim to require your employer to provide time and a place to express milk.

Under [IWC Order 10-2001, Section 12\(C\)](#), a crew member employed on a commercial passenger fishing boat who is on an [overnight trip](#) shall receive no less than eight hours off-duty time during each 24-hour period. This eight-hour period is in addition to the meal and rest periods required under the Wage Order.

Pursuant to [Labor Code Section 1030](#) every employer, including the state and any political subdivision, must provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission need not be paid. The employer shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section. An employer is not required to provide an employee break time for purposes of lactating if to do so would seriously disrupt the operations of the employer. [Lactation Accommodation-Labor Code translation-Spanish](#)

If an employer fails to provide an employee a rest period in accordance with an applicable [IWC Order](#), the employer shall pay the employee one additional hour of pay at the employee's [regular rate of pay](#) for each workday that the rest period is not provided. [Labor Code Section 226.7](#) Thus, if an employer does not provide all of the rest periods required in a workday, the employee is entitled to one additional hour of pay for that workday, not one additional hour of pay for each rest period that was not provided during that workday.

The rest period is defined as a "net" ten minutes, which means that the rest period begins when the employee reaches an area away from the work area that is appropriate for rest. Employers are required to provide suitable resting facilities that shall be available for employees during working hours in an area separate from the toilet rooms.

1. Q.What are the basic requirements for rest periods under California law?

A. Employers of California employees covered by the rest period provisions of the [Industrial Welfare Commission Wage Orders](#) must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. Insofar as is practicable, the rest period should be in the middle of the work period. If an employer does not authorize or permit a rest period, the employer shall pay the employee one hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided.

2. Q.Must the rest periods always be in the middle of each four-hour work period?

A. Rest breaks must be given as close to the middle of the four-hour work period as is practicable. If the nature or circumstances of the work prevent the employer from giving the break at the preferred time, the employee must still receive the required break, but may take it at another point in the work period.

3. Q.My employer is not allowing me to take a rest period. Is there anything I can do about this situation?

A. Yes, there is something you can do if you are an employee covered by the rest period requirements of the [Industrial Welfare Commission Wage Orders](#). If your employer fails to authorize and permit the required rest period(s), you are to be paid one hour of pay at your regular rate of compensation for each workday that the rest period is not authorized or permitted. If your employer fails to pay the additional one-hour's pay, you may [file a wage claim](#) with the Division of Labor Standards Enforcement.

4. Q.Is it permissible if I choose to work through both of my rest periods so that I can leave my job 20 minutes early?

A. No, working through your rest period does not entitle you to leave work early or arrive late.

5. Q.Can my employer require that I stay on the work premises during my rest period?

A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

6. Q.Can an employer require that you keep in radio communication on a rest period?

A. No, the court in *Augustus* also held that on-call rest periods are prohibited. . "[O]ne cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods." *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. This court's determination is unique to rest period on-call time and does not apply to other types of on-call issues such as on-call shifts or on-call meal periods, which are subject to different requirements and considerations.

7. Q. Can I have additional rest breaks if I am a smoker?

A. No, under California law rest period time is based on the total hours worked daily, and only one ten-minute rest period need be authorized for every four hours of work or major fraction thereof.

8. Q. When I need to use the toilet facilities during my work period does that count as my ten minute rest break?

A. No, the 10-minute rest period is not designed to be exclusively for use of toilet facilities as evidenced by the fact that the Industrial Welfare Commission requires suitable resting facilities be in an area "separate from toilet rooms." The intent of the Industrial Welfare Commission regarding rest periods is clear: the rest period is not to be confused with or limited to breaks taken by employees to use toilet facilities. This conclusion is required by a reading of the provisions of IWC Orders, Section 12, Rest Periods, in conjunction with the provisions of Section 13(B), Change Rooms And Resting Facilities, which requires that "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

Allowing employees to use toilet facilities during working hours does not meet the employer's obligation to provide rest periods as required by the IWC Orders. This is not to say, of course, that employers do not have the right to reasonably limit the amount of time an employee may be absent from his or her work station; and, it does not indicate that an employee who chooses to use the toilet facilities while on an authorized break may extend the break time by doing so. DLSE policy simply prohibits an employer from requiring that employees count any separate use of toilet facilities as a rest period.

9. Q. I am regularly scheduled to work an eight-hour shift. What can I do if my employer doesn't allow me to take a rest break?

A. You can either [file a wage claim](#) (the Labor Commissioner's Office), or you can file a lawsuit in court against your employer to recover the the premium of one additional hour of pay at your regular rate of compensation for each workday that the rest period is not provided.

10. Q. What happens if my employer does not provide me with the opportunity to take a break for lactation purposes?

A. If you feel your employer is not providing you with adequate break time and/or a place to express milk as provided for in Labor Code section 1030, you may file a report/claim with the DLSE Bureau of Field Enforcement (BOFE) at the BOFE office nearest your place of employment. See <http://www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm>.

The DLSE may, after an inspection, issue to an employer who violates any provision of this chapter, a civil citation (\$100.00 for each violation) that may be contested in accordance with the procedure outlined in [Labor Code Section 1197.1](#) ([Labor Code Section 1033](#)).

In addition, any employee who is a victim of retaliation for either asserting a right to lactation accommodation or for complaining to the DLSE about the failure of an employer to provide this accommodation may file a retaliation claim with DLSE pursuant to [Labor Code Section 98.7](#) .

11. Q. What is the applicable statute of limitations on filing a rest period claim?

A. In the case of *Murphy v. Cole*, the California Supreme Court held that the remedy for meal and rest period violations of "one additional hour of pay" under Labor Code section 226.7 is a wage subject to a three-year statute of limitations. Accordingly, a claim must be filed within three (3) years of the alleged rest period violation. See attached Division [memoranda](#) regarding the Court's decision.

12. Q. What is the procedure that is followed after I file a wage claim?

A. After your claim is completed and filed with a local office of the Division of Labor Standards Enforcement (DLSE), it will be assigned to a Deputy Labor Commissioner who will determine, based upon the circumstances of the claim and information presented, how best to proceed. Initial action taken regarding the claim can be referral to a conference or hearing, or dismissal of the claim.

If the decision is to hold a conference, the parties will be notified by mail of the date, time and place of the conference. The purpose of the conference is to determine the validity of the claim, and to see if the claim can be resolved without a hearing. If the claim is not resolved at the conference, the next step usually is to refer the matter to a hearing or dismiss it for lack of evidence.

At the hearing the parties and witnesses testify under oath, and the proceeding is recorded. After the hearing, an Order, Decision, or Award (ODA) of the Labor Commissioner will be served on the parties.

Either party may appeal the ODA to a civil court of competent jurisdiction. The court will set the matter for trial, with each party having the opportunity to present evidence and witnesses. The evidence and testimony presented at the Labor Commissioner's hearing will not be the basis for the court's decision. In the case of an appeal by the employer, DLSE may represent an employee who is financially unable to afford counsel in the court proceeding.

See the [Policies and Procedures of Wage Claim Processing](#) pamphlet for more detail on the wage claim procedure.

13. Q. What can I do if I prevail at the hearing and the employer doesn't pay or appeal the Order, Decision, or Award?

A. When the Order, Decision, or Award (ODA) is in the employee's favor and there is no appeal, and the employer does not pay the ODA, the Division of Labor Standards Enforcement (DLSE) will have the court enter the ODA as a judgment against the employer. This judgment has the same force and effect as any other money judgment entered by the court. Consequently, you may either try to collect the judgment yourself or you can assign it to DLSE.

14. Q. What can I do if my employer retaliates against me because I objected to the fact that he doesn't provide employees with rest breaks?

A. If your employer discriminates or retaliates against you in any manner whatsoever, for example, he discharges you because you object to the fact that he's not providing employees with rest breaks, or because you file a claim or threaten to file a claim with the Labor Commissioner, you can [file a discrimination/retaliation complaint](#) with the Labor Commissioner's Office. In the alternative, you can file a lawsuit in court against your employer.

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