



## ADMINISTRATIVE POLICY

### STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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**TITLE: MEAL AND REST PERIODS  
FOR NONAGRICULTURAL WORKERS  
AGE 18 AND OVER**

**NUMBER: ES.C.6.1**

**CHAPTER: [RCW 49.12](#)  
[WAC 296-126-092](#)**

**ISSUED: 1/2/2002  
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#### ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

### **1. Are meal and rest periods conditions of labor that may be regulated by the department under RCW 49.12, the Industrial Welfare Act?**

Yes, the department has the specific authority to make rules governing conditions of labor, and all employees subject to the Industrial Welfare Act (IWA) are entitled to the protections of the rules on meal and rest breaks. The actual meal and rest break requirements are not in the statute but appear in [WAC 296-126-092](#), Standards of Labor.

**Note: Minor employees** (under 18) and **agricultural workers** are not covered by these rules. The regulations for minors are found in [WAC 296-125-0285](#) and [WAC 296-125-0287](#). The regulations for agricultural employees are found in [WAC 296-131-020](#).

### **2. Are both private and public employees covered by these meal and rest period regulations?**

Yes. The IWA and related rules establish a minimum standard for working conditions for all covered employees working for both public sector and private sector businesses in the state, including non-profit organizations that employ workers.

### **3. Does a collective bargaining agreement (CBA) or a labor/management agreement allow public employers to give meal and rest periods different from those under [WAC 296-126-092](#)?**

Yes. Effective May 20, 2003, the legislature amended [RCW 49.12.005](#) to include “the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation”. Thus it brought public employees under the protections of the IWA, including the meal and rest period regulations, [WAC 296-126-092](#). See *Administrative Policy* [ES.C.1 Industrial Welfare Act](#) and [ES.A.6 Collective Bargaining Agreements](#).

Exceptions--The meal and rest periods under WAC 296-126-092 do not apply to:

- Public employers with a local resolution, ordinance, or rule in effect prior to April 1, 2003 that has provisions for meal and rest periods different from those under WAC 296-126-092, or
- Employees of public employers who have entered into collective bargaining contracts, labor/management agreements, or other mutually agreed to employment agreements that specifically vary from or supersede, in part or in total, the rules regarding meal and rest periods, or
- Public employers with collective bargaining agreements (CBA) in effect prior to April 1, 2003 that provide for meal and rest periods different from the requirements of WAC 296-126-092. The public employer may continue to follow the CBA until its expiration. Subsequent collective bargaining agreements may provide for meal and rest periods that are specifically different, in whole or in part, from the requirements under WAC 296-126-092.

If public employers do not meet one of the above exceptions, then public employees are included in the requirements for meal and rest periods under WAC 296-126-092.

#### **4. May a collective bargaining agreement have different provisions for meal and rest periods for employees in construction trades?**

Yes. Effective May 20, 2003, [RCW 49.12.187](#) was amended to include a provision that the rules regarding appropriate meal and rest periods ([WAC 296-126-092](#)) for employees in the construction trades, i.e., laborers, carpenters, sheet metal, ironworkers, etc., may be superseded by a CBA negotiated under the National Labor Relations Act. The terms of the CBA covering such employees must specifically require rest and meal periods and set forth the conditions for the rest and meal periods. However, the conditions for meal and rest periods can vary from the requirements of [WAC 296-126-092](#).

Construction trades may include, but are not necessarily limited to, employees working in construction, alteration, or repair of any type of privately, commercially, or publicly-owned building, road, or parking lot, or erecting playground or school yard equipment, or other related industries where the employees are in a recognized construction trade covered by a CBA.

This exception does not apply to employees of construction companies without a CBA.

#### **5. When is a meal period required?**

Meal period requirements are triggered by more than five hours of work:

- Employees working five consecutive hours or less need not be allowed a meal period. Employees working over five hours shall be allowed a meal period. See [WAC 296-126-092\(1\)](#).

- The 30-minute meal period must be provided between the second and fifth working hour.
- The provision in [WAC 296-126-092\(4\)](#) that no employee shall be required to work more than five consecutive hours without a meal period applies to the employee's normal workday. For example, an employee who normally works a 12-hour shift shall be allowed to take a 30-minute meal period no later than at the end of each five hours worked.
- Employees working at least three hours longer than a normal workday shall be allowed a meal period before or during the overtime portion of the shift. A "normal work day" is the shift the employee is regularly scheduled to work. If the employee's scheduled shift is changed by working a double shift, or working extra hours, the additional meal period may be required. Employees working a regular 12-hour shift who work 3 hours or more after the regular shift will be entitled to a meal period and possibly to additional meal periods depending upon the number of hours to be worked. See [WAC 296-126-092\(3\)](#).
- The second 30-minute meal period must be given within five hours from the end of the first meal period and for each five hours worked thereafter.

## **6. When may meal periods be unpaid?**

Meal periods are not considered hours of work and may always be unpaid as long as employees are completely relieved from duty and receive 30 minutes of uninterrupted mealtime.

It is not necessary that an employee be permitted to leave the premises if he/she is otherwise *completely* free from duties during the meal period. In such a case, payment of the meal period is not required; however, employees must be completely relieved from duty and free to spend their meal period on the premises as they please. These situations must be evaluated on a case-by-case basis to determine if the employee is on the premises in the interest of the employer. If so, the employee is "on duty" during the meal period and must be paid.

Employees who remain on the premises during their meal period on their own initiative and are completely free from duty are not required to be paid when they keep their pager, cell phone, or radio on *if* they are under no obligation to respond to the pager or cell phone or to return to work. The circumstances in determining when employees carrying cell phones, pagers, radios, etc., are subject to payment of wages must be evaluated on a case-by-case basis.

## **7. When must the meal period be paid?**

Meal periods are considered hours of work when the employer requires employees to remain on duty on the premises or at a prescribed work site *and* requires the employee to act in the interest of the employer.

When employees are required to remain on duty on the premises or at a prescribed work site and act in the interest of the employer, the employer must make every effort to provide employees with an uninterrupted meal period. If the meal period should be interrupted due to the employee's performing a task, upon completion of the task, the meal period will be continued until the employee has received 30 minutes total of mealtime. Time spent performing

the task is not considered part of the meal period. The entire meal period must be paid without regard to the number of interruptions.

As long as the employer pays the employees during a meal period in this circumstance and otherwise complies with the provisions of [WAC 296-126-092](#), there is no violation of this law, and payment of an extra 30-minute meal break is not required.

#### **8. May an employee waive the meal period?**

Employees may choose to waive the meal period requirements. The regulation states employees "shall be allowed," and "no employee shall be required to work more than five hours without a meal period." The department interprets this to mean that an employer may not require more than five consecutive hours of work and must allow a 30-minute meal period when employees work five hours or longer.

If an employee wishes to waive that meal period, the employer may agree to it. The employee may at any time request the meal period. While it is not required, the department recommends obtaining a written request from the employee(s) who chooses to waive the meal period.

If, at some later date, the employee(s) wishes to receive a meal period, any agreement would no longer be in effect. Employees must still receive a rest period of at least ten minutes for each four hours of work.

An employer can refuse to allow the employee to waive the meal period and require that an employee take a meal period.

#### **9. What is the rest period requirement?**

Employees shall be allowed a rest period of not less than ten minutes on the employer's time in each four hours of working time. The rest break must be allowed no later than the end of the third working hour. Employees may not waive their right to a rest period.

#### **10. What is a rest period?**

The term "rest period" means to stop work duties, exertions, or activities for personal rest and relaxation. Rest periods are considered hours worked. Nothing in this regulation prohibits an employer from requiring employees to remain on the premises during their rest periods. The term "on the employer's time" is considered to mean that the employer is responsible for paying the employee for the time spent on a rest period.

#### **11. When must rest periods be scheduled?**

The rest period of time must be scheduled as near as possible to the midpoint of the four hours of working time. No employee may be required to work more than three consecutive hours without a rest period.

#### **12. What are intermittent rest periods?**

An "intermittent rest period" is defined as an interval of short duration in which employees are allowed to rest, relax, and engage in brief personal activities while relieved of all work duties.

Courts have held that employers have an obligation to provide employees with breaks and affirmatively promote meaningful break time to ensure employees receive complete relief from work duties. Employees need not be given an uninterrupted 10-minute rest period when the nature of the work allows intermittent rest periods equal to ten minutes during each four hours of work. Employees must be permitted to start intermittent rest periods no later than the end of the third hour of their shift. As discussed in the answer to question No. 13, employees may remain in on-call status during rest periods.

The Court of Appeals has recognized that when the nature of work requires employees to engage in constant mental or physical exertion, intermittent rest periods are not permitted. *Pellino v. Brink's*, 164 Wn. App. 668, 696, 267 P.3d 383 (2011). An example of constant mental exertion that does not permit an intermittent rest period is where the nature of the work requires employees to engage in constant mental vigilance to protect life or property, such as service on an armored truck. An example of constant physical exertion that does not permit an intermittent rest break is where the nature of the work requires continuous physical work activities, such as work on a production line. Employees must be given an uninterrupted 10-minute rest period under these examples or other circumstances where the nature of the work requires constant mental or physical exertion.

Even if an employee engages in brief personal activities, not all short breaks qualify as intermittent rest periods. A series of ten one-minute breaks is not sufficient to meet the intermittent rest period requirement. The Court of Appeals has also recognized that, in some circumstances (e.g. when employees are required to maintain constant vigilance), brief stops to run to the restroom or to grab food or drink to consume are too short and hurried to be considered intermittent rest periods because these stops do not provide a true break from work activity and an opportunity for relaxation. *Pellino v. Brink's*, 164 Wn. App. 668, 696, 267 P.3d 383 (2011).

*Note:* The Division of Occupational Safety and Health's [Directive 5.98](#) states that employers must provide reasonable access to bathrooms and toilet facilities under the regulations promulgated under the Washington Industrial Safety and Health Act. In most work settings this means that the employer may not impose unreasonable restrictions on accessing bathrooms or toilet facilities, including time use restrictions.

### **13. How do rest periods apply when employees are required to remain on call during their rest breaks?**

In certain circumstances, employers may have a business need to require employees to remain on call during their paid rest periods. This is allowable provided the underlying purpose of the rest period is not compromised. This means that employees must be allowed to rest, eat a snack or drink a beverage, make personal telephone calls, attend to personal business, close their door to indicate they are taking a break, or make other personal choices as to how they spend their time during their rest break. In this circumstance, no additional compensation for the 10-minute break is required. If they are called to duty, then it transforms the on-call time to an intermittent rest period and they must receive the remainder of the 10-minute break during that four-hour work period.

### **14. May an employer obtain a variance from required meal and rest periods?**

Employers who need to change the meal and rest period times from those provided in [WAC 296-126-092](#) due to the nature of the work may, for good cause, apply for a variance from the department. The variance request must be submitted on a form provided by the department, and employers must give notice to the employees or their representatives so they may also submit their written views to the department. See [ES.C.9, Variances](#).

**15. May a Collective Bargaining Agreement negotiate meal and rest periods that are different from those required by WAC 296-126-092?**

No. The requirements of [RCW 49.12](#) and [WAC 296-126-092](#), establish a minimum standard for working conditions for covered employees. Provisions of a collective bargaining agreement (CBA) covering specific requirements for meal and rest periods must be least equal to or more favorable than the provisions of these standards, with the exception of public employees and construction employees covered by a CBA. See *Administrative Policy* [ES.A.6](#) and/or [ES.C.1](#).