



ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

**TITLE: MEAL AND REST PERIODS
FOR AGRICULTURAL WORKERS**

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**CHAPTER: [RCW 49.30](#)
[WAC 296-131-020](#)**

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The agricultural rest period regulation, WAC 296-131-020(2), requires employers to provide workers a 10-minute rest period in each 4-hour period of work and to pay workers for rest periods.

The Washington State Supreme Court confirmed employers' obligations to pay agricultural piece-rate workers separate compensation for their rest periods. *Demetrio v. Sakuma Brothers Farms Inc.*, 183 Wn.2d 649, 355 P.3d 258 (2015).

1. 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. Workers must be given a full uninterrupted 10-minute rest period in each four-hour period of work "on the employer's time." The term "on the employer's time" means that the employer is responsible for paying the worker for the time spent on a rest period.

2. When must rest periods be scheduled for agricultural workers?

Workers must be given a full 10-minute rest period in each 4-hour period of work. The rule does not state at what time the break must be scheduled.

3. When does the clock start for the rest period?

The clock starts once the worker is fully relieved of duties. Employers may require workers to remain on the premises during their rest periods.

4. What did the Supreme Court say about agricultural piece-rate workers and paid rest periods?

The Court said agricultural employers who pay their workers by piece-rate must also pay them separate compensation for their rest periods. Employers cannot count piece-rate earnings toward the required rest period compensation. The Court also said that the separate payment must be based on either the regular rate of pay or minimum wage, whichever is greater.

5. What is the difference between pay for meal periods and rest periods for agricultural workers?

Meal periods are unpaid as long as the workers are fully relieved of duties during the entirety of their meal periods.

6. How must employers compute the amount owed for rest periods for agricultural piece-rate workers?

How much a worker must be paid for the rest period depends on whether the worker's regular rate of pay—the average hourly rate of pay for the workweek not including rest periods—is above minimum wage.

To compute the amount owed for rest periods, the employer must first compute the worker's regular rate of pay. This is done by dividing the total compensation earned in a workweek by the total active hours of work (the "total active hours of work" does not include the break time). The result is the regular rate of pay for the week.

- If the regular rate of pay is more than the minimum wage (\$9.47 per hour in 2016) then the employer should multiply the amount of time a worker spends on rest periods by the regular hourly rate of pay and add this amount to what they owe the worker for their piece-rate wages.
- If the regular hourly rate of pay is equal to or less than the minimum wage, then the employer should multiply all hours worked (including the rest periods) by the minimum wage (\$9.47 per hour in 2016). The result is the amount of compensation the worker is owed for the week. The employer must bring the piece-rate compensation up to this amount, guaranteeing that all hours for the workweek (including the rest periods) will be paid at the minimum wage.

The following examples show how employers should calculate the worker's "regular rate" of pay for the workweek.

First, add up the worker's total piece-rate earnings for the workweek. Even if the worker earns different piece rates during the workweek, total all piece-rate earnings for the week. Next, divide those earnings by the worker's **active** hours of work (exclude rest period time). This amount is the worker's "regular rate" of pay.

- **If the regular rate of pay is *more than minimum wage*** (\$9.47 in 2016), multiply the regular rate of pay by the rest period time. This is the amount that must be paid separately for the worker's rest periods. No further calculations are needed for this worker.
- **If the regular rate of pay is *equal to or less than minimum wage***, multiply all hours of work (include both active hours of work and rest period time) by the current minimum wage. This is the amount that must be paid to the worker for all hours of work including time spent on rest periods.

EXAMPLE 1 (worker's regular rate of pay is *more than minimum wage*):

Note: The employer has promised to pay 50 cents for every pound (unit) of strawberries picked.								
	Sun. June 7	Mon. June 8	Tues. June 9	Wed. June 10	Thurs. June 11	Fri. June 12	Sat. June 13	Totals
Units (bins/trees/pounds/etc.)	0	253	249	210	195	183	172	1262 total units
Total Hours of Work (include rest periods)	0	11	11	10	10	10	8	60 total hours
Subtract Rest Periods	0	20 min. (10 x 2)	120 minutes (2.0 hours)					
Active Hours of Work	0	10 hours 40 min.	10 hours 40 min.	9 hours 40 min.	9 hours 40 min.	9 hours 40 min.	7 hours 40 min.	58 hours

For the above example:

1262 units x \$.50 per unit = \$631.00

\$631.00 ÷ 58 active work hours = \$10.88 per hour. This regular rate of pay is **more** than minimum wage (\$9.47 in 2016).

\$10.88 per hour x 2 hours (rest period total) = \$21.76. The worker must be paid this additional amount to compensate for rest periods.

\$631.00 + \$21.76 = \$652.76. The worker must be paid \$652.76 in gross wages for the workweek.

EXAMPLE 2 (worker's regular rate of pay is *equal to or less than minimum wage*):

Note: The employer has promised to pay 50 cents for every pound (unit) of strawberries picked.								
	Sun. June 7	Mon. June 8	Tues. June 9	Wed. June 10	Thurs. June 11	Fri. June 12	Sat. June 13	Totals
Units (bins/trees/pounds/etc.)	0	194	202	152	175	183	127	1033 total units
Total Hours of Work (include rest periods)	0	11	11	10	10	10	8	60 total hours
Subtract Rest Periods	0	20 min. (10 x 2)	120 minutes (2.0 hours)					
Active Hours of Work	0	10 hours 40 min.	10 hours 40 min.	9 hours 40 min.	9 hours 40 min.	9 hours 40 min.	7 hours 40 min.	58 hours

For the above example:

1033 units x \$.50 = \$516.50

\$516.50 ÷ 58 active hours of work = \$8.90 per hour. This regular rate of pay is **less** than minimum wage.

The worker must be paid at least minimum wage for all active work and rest period time. Total hours of work 60 x \$9.47 per hour (minimum wage) = \$568.20. Because the worker has only

earned \$516.50 in piece-rate, the employer must make up the difference so the worker is paid at least minimum wage.

7. May an employer and employee agree to a separate rate of pay for rest periods other than the piece-rate worker's regular rate of pay?

Yes, but the Supreme Court held in *Demetrio* that a separate rate of pay for rest periods must be paid at a rate of pay equal to or greater than the piece-rate worker's regular rate of pay in order to satisfy WAC 296-131-020(2)'s requirement that rest breaks are "on the employer's time." The *Demetrio* Court recognized that paid rest periods provided under WAC 296-131-020(2) can be subject to voluntary bargaining between an employer and employee, but only within the *scope of the law*. Employers and employees can agree to a separate rate of pay for rest periods other than the piece-rate worker's regular rate of pay, but the agreed rate of pay must be equal to or exceed both the applicable minimum wage rate and the piece-rate worker's regular rate of pay.

8. Some employees alternate between piece-rate and an hourly rate of pay. How should the employer calculate the separate pay for the rest periods?

Rest periods for workers who alternate between piece-rate and hourly-rate wage arrangements must be paid according to their basis of pay at the time they take their rest period.

For example, if a worker takes a rest period while working at the hourly rate of pay, the employer is not required to pay separately for the rest period because the rest period has been paid "on the employer's time."

If a worker takes a rest period while working at piece-rate, this rest period must be paid separately at the worker's regular rate of pay or minimum wage, whichever is greater.

9. If an employer pays employees a bonus does this bonus affect the piece-rate rest period pay?

If a bonus is "discretionary," it does not affect the separately paid piece-rate rest period.

If a bonus is "non-discretionary," it must be included in the piece-rate worker's regular rate of pay. For non-discretionary bonuses, employers must either:

- retroactively re-calculate the separate paid rest period rate, or;
- credit the entire production bonus to the workweek in which the bonus is paid *and* calculate the separate paid rest period rate of pay *and* pay for rest periods during that workweek accordingly. (See "Harvest/Season End Bonus" scenario below).

A "discretionary" bonus, gift, or payment in the nature of a gift given on special occasions need not be included in the regular rate of pay. Such a "discretionary" bonus includes any bonus in which the employer retains sole discretion both that a bonus will be paid and that the amount will not be determined until the end, or near the end of the bonus period. Discretionary bonuses are given without any prior contract, agreement, or promise (express or implied), causing the employee to expect the bonus. Discretionary bonuses are not included in an employee's regular rate of pay.

A “non-discretionary” bonus is any bonus which is promised to employees upon hiring or is the result of an agreement that includes, but is not limited to, inducing the employees to work more steadily, more rapidly, more efficiently, or more accurately. If a bonus is based on work performance or production, it is considered a non-discretionary bonus. Non-discretionary bonuses must be included in the piece-rate worker’s regular rate of pay.

EXAMPLE 3 - HARVEST/SEASON END BONUS

Employer promises to pay a non-discretionary bonus of \$1 per bin at the end of the harvest. The bonus is contingent on the employee remaining with the employer through to the end of the harvest. The employee is paid each week.

WEEK 1 (for ease of calculations we will assume the worker completed the same work each week for the six weeks of the apple harvest)

Note: The employer has promised to pay \$15 for every bin (unit) of apples picked.								
	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Totals
Units (bins/trees/pounds/etc.)	0	8	9	7	8	7	6	45 total units
Total Hours of Work (include rest periods)	0	11	11	10	10	10	8	60 total hours
Subtract Rest Periods	0	20 min. (10 x 2)	120 minutes (2.0 hours)					
Active Hours of Work	0	10 hours 40 min.	10 hours 40 min.	9 hours 40 min.	9 hours 40 min.	9 hours 40 min.	7 hours 40 min.	58 hours

Bonus treated as retroactive to beginning of season:

270 bins picked in 6 weeks x \$1 bonus = \$270
 58 active hours of work x 6 = 348 active hours of work
 \$270 bonus ÷ 348 total active hours of work = \$.775 bonus per hour
 2 hours of breaks each week = 12 hours of breaks

12 hours of breaks x \$.775 bonus per hour =
 \$9.30 total additional pay for separate paid rest periods

Bonus attributed to last workweek:

270 bins picked in 6 weeks x \$1 bonus = \$270
 \$270 bonus ÷ 58 total active hours of work = \$4.655 bonus per hour

2 hours of breaks x \$4.655 bonus per hour =
 \$9.31 total additional pay for separately paid rest periods

10. If an employee is paid an hourly rate of pay and receives a bonus, must the employee be paid separately for the rest periods?

Separate pay for rest periods does not apply to employees who are paid solely on an hourly rate of pay. Payments (including bonuses) based on production meet the definition of piecework because the piece-rate is tied to the employee’s output. Such piece-rate payments must be included in the separate pay for rest periods to satisfy the requirement that rest periods are “on

the employer's time." Accordingly, if an agricultural piece-rate worker paid hourly receives a payment based upon production, separate pay for rest periods is required. The additional rest period pay would be based on the amount of the production based payments only and would not include the hourly rest period pay already provided.

11. How should an employer document payment for rest periods on the employee's pay statements?

To comply with WAC 296-131-015, employers must document each piece-rate worker's rest period rate or rates of pay, the total hours spent on rest periods, and the gross amount paid for the rest periods. A best practice is to provide separate line-items in the pay statement that provide the rest period rate or rates of pay, the total hours spent on rest periods, and the gross amount paid for rest periods. However, a separate pay statement that provides this information would also comply with the WAC.