



## Interpretive Notice & Formal Opinion (“INFO”) # 4:

### Meal and Rest Periods

#### Overview

This INFO addresses what qualifies as a meal and rest period, and when such periods are required under [Colorado Overtime and Minimum Pay Standards Order \(“COMPS Order”\), 7 CCR 1103-1](#).

#### Meal Periods of 30 Minutes (sometimes called “Lunch breaks”)

For shifts of over 5 consecutive hours, all employees are entitled to uninterrupted, duty-free meal periods of at least 30 minutes (unless the COMPS Order makes them exempt).<sup>1</sup>

- **Timing:** Meal periods must be at least 1 hour after starting and 1 hour before ending a shift, to the extent practical.
- **When meal periods can be unpaid:** For meal periods to be unpaid, non-work time, employees must be completely relieved of all duties, allowed to leave the work site, and allowed to do personal activities.
- **If uninterrupted meal time is impractical:** If the type of work makes an uninterrupted, duty-free meal period impractical, an employer must let an employee eat while working, and pay for that time.<sup>2</sup> Whether a meal period is impractical depends on the situation. But except in special cases, an employer can’t declare *all* meal periods for *all* employees impractical, and never provide them, even if it pays for the time.

**Example 1:** A security guard patrolling outdoor facilities by car had 30-minute meal periods. During that time, the employee was relieved of patrolling duty, and allowed to exit the car — but not allowed to leave the work site or nap. The employee’s activities were at least partly restricted, and they could not leave the work site – either of those facts was enough to make the 30 minutes not qualify as an unpaid meal period, so that time had to be paid. ([Raven Corp. DLSS Case #1305-17 \(Hearing Officer Decis. No. 18-034, May 30, 2018\)](#) (“The plain language [of the meal period rule] ... provides employers with a clear choice: relieve employees of all job duties for at least 30 minutes *and* permit them to pursue personal activities or, if impractical, let them eat while on duty and compensate them for their time.”).

**Example 2:** A grocery store is staffed with multiple checkout aisles, each staffed with a cashier scheduled for 6 or more consecutive hours per shift. The employer pays for all time, and lets cashiers eat while on-duty. But it provides no meal periods, explaining that all meal periods are “impractical” because the store is “always busy.” This denial of meal periods is unlawful. The store can allow meal periods and still operate checkout aisles, because it can schedule cashiers to take meal periods at different times. While having staff never take breaks may save on staffing, and make scheduling easier, that’s not enough to make meal periods “impractical” enough for an employer to disallow them in.

**Example 3:** A 24-hour gas station and convenience store does not allow an uninterrupted meal period for the one employee who works the 10:00 p.m. to 6:00 a.m. overnight shift. This is permissible, because the employee must be on-duty for the entire shift to serve customers, and the options the employer has to let the employee leave the work site for an uninterrupted duty-free meal period are impractical: (a) closing the entire business, or (b) covering the employee’s 30-minute meal period by hiring a second staffer it does not need other than for those 30 minutes. But the employer must let the employee eat a meal while on duty, and must pay their agreed-upon rate for that time.

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<sup>1</sup> For a summary of exemptions from meal and rest periods in the COMPS Order, see [INFO #1](#). As of June 2021, agricultural employees receive the same rest and meal periods as other employees, as [INFO #12B](#) explains.

<sup>2</sup> [COMPS Order, Rule 5.1](#)

## **Rest Periods of 10 Minutes**

Employers must **authorize and permit** paid 10-minute rest periods for **each 4 hours of work**, or major fraction of that time (i.e., more than 2 hours). An additional rest period is required for any period that rounds up to four hours. For example, a shift of 2 hours or fewer requires no rest periods, a 2-hour and 1-minute shift requires one, and a 6-hour shift also requires one, but a 6-hour and 1-minute shift requires two:

<b><u>Work Hours</u></b>	<b><u>Rest Periods Required</u></b>
2 or fewer	0
Over 2 and up to 6	1
Over 6, and up to 10	2
Over 10, and up to 14	3
Over 14, and up to 18	4
Over 18, and up to 22	5
Over 22	6

- Rest periods must not include work, but employers don't have to let employees leave the work site.
- Rest periods should be in the middle of each 4-hour work period, to the extent practical.<sup>3</sup>

## **Authorize and Permit**

Employers must authorize and permit their employees to take all required rest periods.<sup>4</sup> This **does not** mean that employees must actually **have** a rest period, if they choose to keep working. However, the choice to skip a rest period must be entirely voluntary and made without employer coercion.

If an employer asserts that an employee had permission to take a rest period, but in reality the employee was unable or discouraged to do so, then a rest period was not "authorized and permitted." "Authorize" means formal permission to take a rest period, but "permit" means, given workplace realities, the employee **actually was able** to take a rest period **without repercussions**. A handbook, policy, or schedule that appears to allow a rest period is not *conclusive* evidence a rest period was authorized or permitted, *if* the employee provides evidence that workplace realities created either pressure to skip, or practical obstacles to taking, a rest period.<sup>5</sup> Possible evidence an employer did not in reality permit rest periods may include that the employer:

- 1) pressured an employee not to take rest periods;
- 2) knew an employee's workload, schedule, deadline, or quota made rest periods infeasible; and/or
- 3) did not adequately inform employees that rest periods were paid.<sup>6</sup>

## **In the Middle of Each 4-Hour Period**

Rest periods must be as close as possible to the middle of each 4 hours that employees work.<sup>7</sup> This ensures that employees receive rest periods roughly every 4 hours.

**Example 5:** If an employee works 8 hours, they should not receive their 2 rest periods in the first and last hours of the workday. That would leave them working over 6 hours without a rest period.

<sup>3</sup> [COMPS Order, Rule 5.2.](#)

<sup>4</sup> COMPS Order, Rules 5.2 & 5.2.4.

<sup>5</sup> [Brinker Restaurant Corp. v. Superior Court, 273 P.3d 513, 546 \(Cal. 2012\)](#) (rest period rules "do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks"; an "informal anti-meal-break policy 'enforced through ridicule or reprimand would be illegal").

<sup>6</sup> See Brinker (above); [Cicairos v. Summit Logistics, 35 Cal. Rptr. 3d 243, 253 \(Cal. Ct. App. 2005\)](#) ("as long as an employer authorizes and permits...rest periods (and clearly communicates this authorization and permission), the employer will not be liable ... if the employees fail to take ... rest breaks, provided that the employees did not forego the full rest period as a result of...coercion or encouragement" (quoting Dept. of Industrial Relations, DLSE Opinion Letter 2001.04.02)).

<sup>7</sup> COMPS Order, Rule 5.2.2.

## Alternate Rest Period Schedules

An employer may provide shorter rest periods, of at least 5 minutes, **only if**:

- 1) the employee and the employer agree, **voluntarily and without coercion**, to have two 5-minute rest periods every 4 hours, **and** 5 minutes is sufficient, in the work setting, to allow the employee to go back and forth to a bathroom or other location where a bona fide rest period would be taken; **or**
- 2) the work is under a collective bargaining agreement, or in Medicaid-funded home care (defined in [COMPS Order, Rule 5.2.1\(B\)](#)), **and** the day's total rest periods average 10 minutes per 4 hours.

Alternatively, an employee may **voluntarily and without coercion agree** on a different rest period schedule with the employer — for example, if an employee wants to combine two rest periods into one 20-minute rest period. Employers are not required to negotiate rest period schedules, though. Any agreement to a different rest period schedule doesn't change the employee's right to payment for time spent on duty during rest period time.<sup>8</sup>

## Impracticality / Practicality

The practicality of rest periods doesn't affect *whether* rest periods must be provided, only *when* they must be — in the middle of a shift or not. If rest periods are not provided, extra pay must be given — see below.

## Payment Due for Missed Rest Periods

Rest periods are considered time worked, including for purposes of calculating minimum wage and overtime.<sup>9</sup>

- **Pay is owed for rest periods not provided:** A rest period requires 10 minutes of pay without work, so work performed during a rest period is additional work requiring additional pay. That means a failure to authorize and permit a duty-free, 10-minute paid rest period is a failure to pay 10 minutes of wages at the **employee's agreed-upon or legally required** rate of pay (whichever is higher).<sup>10</sup>

**Example 6:** Each week, an employee is paid \$15 per hour for five 7-hour days: two 3½-hour work shifts, with a duty-free 30-minute meal period in-between — and no rest periods. But each day the employer pays for 7 hours, they should receive only *6 hours and 40 minutes* of work — because the employee should have had 10 minutes of non-work in each 3½-hour shift. So in addition to the employee's 35 paid hours, the employee is owed extra pay for working an extra 20 minutes each day, for a total of 100 extra minutes of pay per week. Even with the extra 100 minutes, the employee did not work over 40 hours per week, so overtime pay isn't required.<sup>11</sup> The employee must be paid an extra 100 minutes at their \$15 hourly pay rate — a total of \$25 more per week.

- **Pay owed for *all* rest period time denied:** The rule that wages are owed when rest periods are not authorized and permitted applies to *all* rest period time, including:
  - **rest periods of different lengths** — for example, 15-minute rest periods for hand-weeding;
  - **partial rest periods** — for example, if an employer provides a 5 minutes rather than 10 minutes of rest period, then they owe 5 minutes of pay; and
  - **salaried or other non-hourly-paid employees**, unless they qualify for a specific exemption.

<sup>8</sup> [COMPS Order, Rule 5.2.1](#).

<sup>9</sup> COMPS Order, Rule 5.2.3.

<sup>10</sup> COMPS Order, Rule 5.2; [Lozoya v. AllPhase Landscape Construc., #12-cv-1048-JLK, 2015 WL 1757080, at \\*2 \(D. Colo. Apr. 15, 2015\)](#) (“[B]eing forced to work through required rest breaks means in effect that Plaintiffs were not compensated for that time,” because when “employees are not provided with the mandated rest period, their workday is extended by 10 minutes,” so they can sue “for lost wages because of unused rest breaks”) (quoting *Wingert v. Yellow Freight Sys.*, 50 P.3d 256, 260 (Wash. 2002)); *Sanchez v. Front Range Transp.*, #17-cv-00579-RBJ, 2017 WL 4099896, at \*4 (D. Colo. Sept. 15, 2017) (employee denied “rest periods, for which she would have been paid, ... effectively provided the equivalent number of minutes of work ... without additional compensation,” and may claim unpaid wages) (citing *Lozoya*)).

<sup>11</sup> Example 10 below illustrates how rest period pay is calculated in workweeks and workdays requiring overtime pay.

**Example 7:** A car dealership provides no rest periods to its manager or its mechanic:

(A) The *manager* is paid \$2,000 per week and spends almost all their time as a supervisor. They are an exempt “executive or supervisor” under COMPS Rule 2.2.2. That rule exempts from *both* overtime *and* rest and meal periods, so providing no rest periods is legal.

(B) COMPS Rule 2.4.1 exempts a *mechanic* at a car dealer from *overtime*, but not *rest and meal* periods. The mechanic works five 12-hour shifts, at a \$1,600 salary, weekly. Each 12-hour shift should have had 12 hours of pay for 11 hours and 30 minutes of work, plus three 10-minute rest periods. By giving 12 hours’ pay for 12 hours’ work, the employer required extra work: 30 minutes a day, 150 minutes a week. The mechanic’s regular hourly rate is \$40: the \$1,600 salary divided by 40 hours.<sup>12</sup> The employer owes \$100 in extra weekly pay: \$40 per hour for 150 minutes.

- **Can’t pay extra instead of giving breaks:** The rest period rule says: “**Every** employer **shall** authorize and permit a compensated 10-minute rest period. ... for **all** employees.”<sup>13</sup> That means employees must actually be allowed to go off-duty. The rule offers **no alternative to authorizing and permitting rest**, only permission to have shorter rest periods in some situations and requirements to have longer ones in others, or for employees to voluntarily choose, without coercion, not to take rest periods. This is different from the meal period rule, which lets employers require, if duty-free meal periods are impractical, employees to work through meal periods, with pay and permission to eat during that time.<sup>14</sup>

**Example 8:** An employer pays all of its warehouse employees \$20 per hour. The employees work 8-hour shifts, with a meal period (30 minutes, unpaid), but no rest periods. An employee asked about this, and the owner responded, “I already pay you more than minimum wage, so the extra pay covers the 20 minutes of rest you would be taking.” This is a violation because the employer did not provide the employees with two 10-minute rest periods, so the employees worked for 20 extra minutes each day. Each employee has a monetary claim for unpaid wages of \$6.67 per day. It is also a non-monetary violation of the duty to allow rest periods, subjecting the employer to possible fines and compliance orders, as detailed below.

**Example 9:** A 24-hour gas station has two cashiers on 1st shift, two on 2nd shift, and one on 3rd shift. Each is paid \$15 per hour. On 1st and 2nd shift, the cashiers take turns taking rest and meal periods, so someone is always available to cover the counter. The employer tells the 3rd shift employee they can eat during their shift but can’t take rest periods, because they are the only person at work. The employer pays that cashier an extra \$5 per shift, to make up for the rest period time. There is no monetary violation, because the employer paid the employee for the time worked that they were entitled to use for rest. But there is a non-monetary violation of the duty to allow rest periods, subjecting the employer to possible fines and compliance orders, as detailed below.<sup>15</sup>

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<sup>12</sup> The hourly regular rate of pay for a salaried employee is their weekly pay rate divided by 40 hours, with an exception. If there is a “clear mutual understanding” that a weekly salary (or other non-hourly pay) provides the *regular, non-overtime* rate for all hours worked, with extra pay added for overtime hours, then the regular rate is the weekly pay divided by actual hours worked. If, as in this example, the employee was not paid extra for overtime hours, then there is no such understanding, so the hourly regular rate of pay is the weekly pay rate divided by 40 hours. COMPS Order Rule 1.8 explains how to calculate “regular rates” of pay.

<sup>13</sup> COMPS Order, Rule 5.2.

<sup>14</sup> COMPS Order, Rule 5.1.

<sup>15</sup> Requiring the employee to work through their meal period was not a violation, because it was impractical as explained above, the employee was allowed to eat on the job, and the employee was paid for all time worked.

## When Payment Due for Missed Rest Periods Is Overtime Premium Pay

Time-and-a-half overtime pay is required for work past 40 hours in a week or 12 in a day<sup>16</sup> (except for overtime-exempt employees<sup>17</sup>), and “required rest periods are time worked for the purposes of calculating ... overtime.”<sup>18</sup> That means pay for missed rest periods must be at time-and-a-half overtime rates for any missed rest periods during overtime hours — the hours past 40 in a week, or 12 in a day.<sup>19</sup>

**Example 10:** An employee who works four 10-hour days per week and is paid \$30 per hour is not allowed to take rest or meal periods. Because they were required to work through rest periods, the employee’s shifts were extended by 20 minutes per day (100 minutes per week). That puts their time worked over 40 hours per week, since rest periods are time worked for overtime purposes. The employee is owed an extra \$15 per hour in overtime premium pay for the extra 100 minutes of time worked, for a total of \$25 per week.

## Employer Tracking and Record-Keeping

Employers must ensure the availability of meal and rest periods, keep daily records of all time worked by each employee, and give employees pay statements which include total hours worked in the pay period.<sup>20</sup> “Time worked” includes all rest period time, and meal period time if an employee works through meal period time.

## Remedies Other than Unpaid Wages: Compliance Orders and Fines

Whether or not a violation requires paying extra wages to any employees, violations may yield other remedies:

- **compliance orders**, requiring the employer to cease the violation, change policies causing the violation, and otherwise redress the violation; and/or
- **fines**, for violations of Division rules or other orders, including the COMPS Order Rule 5 requirements to provide meal breaks unless impractical, and to provide rest breaks.<sup>21</sup>

## Additional Information

Visit the Division’s [website](#), call 303-318-8441, or email [cdle\\_labor\\_standards@state.co.us](mailto:cdle_labor_standards@state.co.us).

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<sup>16</sup> [COMPS Order, Rule 4.1](#).

<sup>17</sup> COMPS Order, Rule 2.2-2.5.

<sup>18</sup> COMPS Order, Rule 5.2.3.

<sup>19</sup> See [Super Mario Construction, LLC, DLSS Direct Investigations Case #20-0026 \(Citation & Notice of Assessment, Nov. 23, 2021\)](#), at 32:

Unless done at the election of the employee—voluntarily and without coercion—working through a rest period constitutes ten additional minutes of work for which compensation, including overtime as applicable, is owed[.] ... Therefore, a failure by an employer to authorize and permit a 10-minute compensated rest period is a failure to pay 10 minutes of wages ... , plus overtime premium should these additional 10 minutes be considered overtime. For example, where an employee works 12 hours but does not receive three legally-required breaks during that shift, the employee has worked an additional 30 minutes (3 x 10 minute breaks), all of which must be paid at an overtime rate under the daily overtime rule.

See also [Lozoya](#), above, at \*2 (“Plaintiffs seek straight or overtime pay for the rest periods required ... that Defendant allegedly did not allow.... I find that Plaintiffs may prevail on their claim for lost wages because of unused rest breaks.”) (citing Wingert, above, 50 P.3d at 256); [Washington State Nurses Ass’n v. Sacred Heart Medical Center, 287 P.3d 516, 519 \(Wash. 2012\)](#) (“employees who must work through their overtime break are, in effect, providing ... an additional 10 minutes of labor during ... overtime [hours] ... [and] were entitled to compensation for an additional 10 minutes of overtime.”) (quoting Wingert, above).

<sup>20</sup> COMPS Order, Rule 7.1(C), 7.2. For more information about employer record-keeping requirements, see [INFO #7](#).

<sup>21</sup> C.R.S. 8-1-140(2) provides for fines for any failure (a) “to perform any duty lawfully enjoined within the time prescribed by the director” or (b) “to obey any lawful order made by the director” , which includes “any decision, rule, regulation, requirement, or standard promulgated by the director[.]” C.R.S. 8-1-101(11).