



## 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 #36 \(“COMPS #36”\)](#).

#### Meal Periods

For shifts of over 5 consecutive hours, employees are entitled to uninterrupted, duty-free meal periods of at least 30 minutes. For a meal period to qualify as unpaid, non-work time, employees must be completely relieved of all duties, allowed to leave the worksite, and allowed to pursue personal activities. To the extent practical, meal periods must occur at least 1 hour after starting, and 1 hour before ending, a shift. If the type of work makes uninterrupted, duty-free meal periods impractical, employees must be allowed to eat meals while working, and must be paid for the full meal period. [COMPS #36, Rule 5.1](#).

**Example:** A security guard patrolling outdoor facilities by car had 30-minute meal periods – relieved of patrolling duty and allowed to exit the car, but they were not allowed to leave the worksite or nap. The employee’s activities were at least partly restricted, and they could not leave the worksite – either of which was sufficient to require pay for the 30 minutes, because it was not a qualifying unpaid meal period. ([Raven Corp. DLSS Case #1305-17 \(Hearing Officer Decis. No. 18-034, May 30, 2018\)](#).) (“The plain language of the Wage Order 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.”)

#### Rest Periods

For each 4 hours of work, or major fractions thereof (i.e., over 2 hours), employers must authorize and permit compensated 10-minute rest periods. Rest periods must not include work, but leaving the premises is not necessary. To the extent practical, rest periods should be in the middle of each 4-hour work period. [COMPS #36, Rule 5.2](#). For example, a shift of 2 hours or fewer requires *no* rest periods; a 2-hour and 1-minute shift requires *one*, and so does a 6-hour shift; a 6-hour and 1-minute shift requires *two*.

<u>Work Hours</u>	<u>Rest Periods Required</u>
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

#### Authorize and Permit

Employers must authorize and permit their employees to take all required rest periods. [COMPS #36, Rules 5.2 & 5.2.4](#). 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. ([Brinker Rest. 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”; and an “informal anti-meal-break policy ‘enforced through ridicule or reprimand would be illegal’”.) Possible evidence an employer did not in reality permit rest periods may include:

- 1) an employee felt pressure from the employer not to take rest periods;
- 2) an employer knew an employee workload, schedule, deadline, or quota made rest periods infeasible; and/or
- 3) that employees were not adequately informed that rest periods were paid.

([Brinker](#); see also [Cicairos v. Summit Logistics, Inc., 35 Cal. Rptr. 3d 243, 253 \(Cal. Ct. App. 2005\)](#).) (“[A]s long as an employer authorizes and permits ... required 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 employer coercion or encouragement.”)

### **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. [COMPS #36, Rule 5.2.2](#). This ensures that employees receive rest periods roughly every 4 hours.

**Example:** If an employee works for 8 hours, s/he should not receive his/her 2 rest periods in the first and last hours of the workday, as this would leave the employee working for over 6 hours without a rest period.

### **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, **as long as** 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 agricultural, Medicaid-funded home care (defined in [COMPS #36, Rule 5.2.1\(B\)](#)), or under a collective bargaining agreement, **and** if the day’s total rest periods average 10 minutes per 4 hours.

Alternatively, an employee may negotiate the timing of rest periods with the employer **if the employee, voluntarily and without coercion from the employer, agrees to** a different rest period schedule. For example, if during an 8-hour shift an employee wishes to combine 2 rest periods into a single 20-minute rest period, the employee may negotiate for that. Or an employee may negotiate to receive a rest period during the last 10 minutes of a shift, to allow an early departure, while still being paid for the entire shift. Employers are not required to negotiate rest period schedules if it would be undesirable or impractical, but it is an option.

Any agreement for a modified rest period schedule does not change the employee’s right to payment for time spent working or otherwise on duty during rest periods. [COMPS #36, Rule 5.2.1](#).

### **Impracticality / Practicality**

The practicality of rest periods does not affect *whether* rest periods must be provided, only *when* they must be – in the middle of a shift or not. Where rest periods are not provided, extra pay must be given, as noted below.

### **Payment Due for Missed Rest Periods**

Rest periods are considered time worked for purposes of calculating minimum wage and overtime. [COMPS #36, Rule 5.2.3](#). A rest period requires 10 minutes of pay without work, so work performed during a rest period is additional work requiring additional pay. Thus, 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 (whichever is higher) rate of pay. [COMPS #36, Rule 5.2. \(\*Lozoya v. AllPhase Landscape Construction\*, #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 Systems*, 50 P.3d 256, 260 (Wash. 2002)); [Sanchez v. Front Range Transportation](#), #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*).

**Important:** It is the employer's responsibility to track employee time worked and ensure that employees either are allowed rest periods as required, or are paid for those rest periods. If an employee voluntarily chooses to skip rest periods, the employer does not have to pay extra for that time, so long as the choice is truly voluntary.

**Example:** An employee is not allowed rest periods while working five 8-hour days a week, at a \$15 hourly pay rate. Each day, the employee should have had two 10-minute rest periods, and thus should have worked only 7 hours and 40 minutes. So the employee is owed extra pay for working an extra 100 minutes a week. Though pay is required for this extra 100 minutes of work (in addition to the 40 paid hours), time and one-half overtime premium pay is not required, because no time was worked past 40 hours in the week. Thus, the employee is entitled to be paid an additional \$25 per week (100 minutes of pay at the \$15 hourly pay rate).

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

Time and one-half overtime pay is required for work past 40 hours a week or 12 hours a day ([COMPS #36, Rule 4.1](#)), unless workers are overtime-exempt ([Rule 2.2-2.5](#)), and "required rest periods are time worked for the purposes of calculating ... overtime" ([Rule 5.2.3](#)). That means pay for missed rest periods must be at overtime rates for any missed rest periods during overtime hours – the hours past 40 a week, or 12 a day. ([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 v. Yellow Freight Systems*, P.3d 256, 260 (Wash. 2002)); [Washington State Nurses Association v. Sacred Heart Medical Center](#), 287 P.3d 516, 519 (Wash. 2012) ("[E]mployees 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*)).

**Example: Weekly 40-Hour Overtime:** An employee paid \$15 per hour is not authorized and permitted rest periods while working five 12-hour days a week. Each day should have included three 10-minute rest periods, so the employee is owed extra pay for working an extra 150 minutes a week. Because hours past 40 a week must be paid time and one-half overtime pay, the employee must be paid (A) the regular rate of pay for the first 10 rest periods missed (those in the first 40 hours), and (B) time and one-half overtime pay for the 11th and later rest periods missed (those in hours 41 onward). So the employee is owed \$15 an hour for 100 minutes (the first 10 rest periods), and \$22.50 an hour for 50 minutes (the 11th-15th rest periods), for a total of \$43.75 a week.

**Example: Daily 12-Hour Overtime:** If the above-described employee instead worked 16 hours a day, any hours worked past 12 a day must be paid at the employee's time and one-half overtime rate, so that employee must be paid (A) the regular rate of pay for the first 3 missed rest periods (the rest periods during the first 12 hours), and (B) time and one-half overtime pay for the 4th missed rest period (the one rest period during hours 12 onward). So the employee is owed \$15 an hour for 30 minutes (the first 3 rest periods) and \$22.50 an hour for 10 minutes (the 4th rest period), for a total of \$11.25 a day.

### 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).