



FAQ - Rest Periods



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.

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

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.

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.

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.

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.

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.

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.

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 premium of one additional hour of pay at your regular rate of compensation for each workday that the rest period is not provided.

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.

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.

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 wage claim under Labor Code section 226.7 and recover one hour of pay for each violation. See <https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm>.

You may also 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 day an employee is denied reasonable break time or adequate space to express milk) 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 or attempting to assert 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](#).

See

<https://www.dir.ca.gov/dlse/HowToFileRetaliationComplaint.htm>..

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.

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.