



# FAQs on upcoming changes to rest and meal break entitlements

The Employment Relations Amendment Act 2018 (the Act) introduces several employment law changes that aim to improve fairness in the workplace, and deliver decent work conditions and fair wages. Below is some information on what the change to rest and meal break entitlements means for employees and employers when the Act comes into effect on Monday 6 May 2019.

## What is the Act asking employers to do?

Prior to 6 May 2019, the law requires that employees receive a reasonable opportunity to take paid rest and unpaid meal breaks that are of an appropriate duration for the employee's work period, without specifying the number, duration and position of the breaks within the work day. From 6 May 2019, the Act requires that employees have set rest and meal breaks, so that they have time to rest, refresh and attend to personal matters. The number and duration of breaks will depend on the hours worked.

Breaks benefit workplaces by making sure that employees work safely and productively. Employers must pay for minimum rest breaks but don't have to pay for minimum meal breaks. Employers and employees need to agree when to take their breaks. If they cannot agree, the law will require the breaks to be taken at times as specified in the Act, so long as it's reasonable and practicable.

## What breaks are employees entitled to?

Employees are entitled to breaks based on the number of hours that they work. The Act provides an exemption from the set rest and meal break entitlements in certain circumstances for essential services or employers that engage in New Zealand's national security. You can find more on the exemption below.

The table below sets out the minimum rest and meal breaks an employee is entitled to, based on the length of an employee's work period.



Length of employee's work period	Minimum number of rest and/or meal breaks employees are to be provided.
2.00 - 4.00 hours	1 x 10 minute paid rest break
4.01 - 6.00 hours	1 x 10 minute paid rest break
	1 x 30 minute unpaid meal break
6.01 - 10.00 hours	1 x 10 minute paid rest break
	1 x 30 minute unpaid meal break
	1 x 10 minute paid rest break
10.01 – 12 hours	1 x 10 minute paid rest break
	1 x 30 minute unpaid meal break
	1 x 10 minute paid rest break
	1 x 10 minute paid rest break
12.01 to 14 hours	1 x 10 minute paid rest break
	First 30 minute unpaid meal break
	1 x 10 minute paid rest break
	1 x 10 minute paid rest break
	Second 30 minute unpaid meal break
14.01 to 16 hours	1 x 10 minute paid rest break
	First 30 minute unpaid meal break
	1 x 10 minute paid rest break
	1 x 10 minute paid rest break
	Second 30 minute unpaid meal break
	1 x 10 minute paid rest break

### When do the breaks need to be taken?

The employer and employee can agree when the rest and meal breaks are to be taken. Both employers and employees have an obligation to act in good faith when negotiating timing for breaks.

A take it or leave it approach by an employer is unlikely to be seen as an agreement, rather a unilateral decision imposed by the employer (which would then raise questions around whether or not the timing of breaks were provided as specified in the Act, and if not, whether it was reasonable and practicable for the employer to provide the breaks when they did).

The duty of good faith requires parties to be active and constructive in maintaining a productive employment relationship. It also requires the parties to be responsive and communicative.

Good faith is a two way street. We would expect parties to use their best endeavours to come up with a flexible solution that works for them. The parties can agree any flexibility that is required around the timing of breaks i.e. “that their first 10 minute paid rest break can be taken at the end point of a service delivery run within the first four hours of the work period”.

Employers would need to consider their health and safety obligations in agreeing to the timing of breaks (for example, managing the risks that may arise from worker fatigue).

[Mediation services](#) are available to help parties try to reach an agreement on when breaks can be taken.



## What happens if the employer and employees cannot reach an agreement?

If the parties cannot agree on when rest and meal breaks should be taken, then the employer should provide rest and meal breaks as close to the times set in the Act, so far as reasonable and practicable in the circumstances.

Businesses can provide breaks at different times, if it's not reasonable and practicable at the times set in law. This is intended to account for individual circumstances across different workplaces. The need to maintain business continuity or production could be a valid reason for an employer to vary the timing of breaks. However, other factors would need to be considered too – such as the intensity of the employee's work prior to a scheduled break. The employer should provide their employees with their break entitlements at or as close to these set timings, so far as is reasonable and practicable in the circumstances.

The timing of breaks is based on the length of the employees shift, the table below describes when each break should be taken, so far as is reasonable and practicable in situations where the parties have not reached agreement on the timing of breaks.

Length of employee's work period	Minimum number of rest and/or meal breaks	If the employer and employee cannot agree to the timing of breaks, an employer must provide breaks at the following times, so far as is reasonable and practicable. <sup>1</sup>
<b>2.00 - 4.00 hours</b>	1 x 10 minute paid rest break	In the middle of the work period
<b>4.01 - 6.00 hours</b>	1 x 10 minute paid rest break	One-third of the way through the work period
	1 x 30 minute unpaid meal break	Two-thirds of the way through the work period
<b>6.01 - 10.00 hours</b>	1 x 10 minute paid rest break	Halfway between the start of work and the meal break
	1 x 30 minute unpaid meal break	In the middle of the work period
	1 x 10 minute paid rest break	Halfway between the meal break and the finish of the work period
<b>10.01 – 12 hours</b>	1 x 10 minute paid rest break	Halfway between the start of work and the meal break
	1 x 30 minute unpaid meal break	In the middle of the first 8 hours of work
	1 x 10 minute paid rest break	Halfway between the meal break and the end of the first 8 hours of work
	1 x 10 minute paid rest break	Halfway between the end of the first 8 hours of work and the end of the work period
<b>12.01 to 14 hours</b>	1 x 10 minute paid rest break	Halfway between the start of work and the first meal break
	First 30 minute unpaid meal break	In the middle of the first 8 hours of work
	1 x 10 minute paid rest break	Halfway between the meal break and the end of the first 8 hours of work



Length of employee's work period	Minimum number of rest and/or meal breaks	If the employer and employee cannot agree to the timing of breaks, an employer must provide breaks at the following times, so far as is reasonable and practicable. <sup>1</sup>
	1 x 10 minute paid rest break	One third of the way between the end of the first 8 hours of work and the end of the work period
	Second 30 minute unpaid meal break	Two thirds of the way between the end of the first 8 hours of work and the end of the work period.
<b>14.01 to 16 hours</b>	1 x 10 minute paid rest break	Halfway between the start of work and the first meal break
	First 30 minute unpaid meal break	In the middle of the first 8 hours of work
	1 x 10 minute paid rest break	Halfway between the first meal break and the end of the first 8 hours of work
	1 x 10 minute paid rest break	Halfway between the end of the first 8 hours and the second meal break
	Second 30 minute unpaid meal break	Halfway between the end of the first 8 hours and the end of work
	1 x 10 minute paid rest break	Halfway between the second meal break and the end of work

Ultimately, the timing of breaks is to be provided by the employer. Where the employer has tried in good faith to reach agreement on breaks, and where it is not reasonable or practicable to provide breaks at the set times in the Act, then the employer could determine (having weighed up the relevant considerations, which could include the operational needs of the business and the needs of the employee, such as the length of time since they have had a break and the intensity of their work) when the breaks will be taken. Where there is no agreement on timing of breaks then the further away the timing of the breaks are from the timing set in the Act, the greater the justification the employer will need to have for why it was not reasonable and practicable to take the break at or closer to the times set in the Act.

Mediation services are available to help parties come to a solution. It is free and easy to use. You can request [mediation services through the Employment New Zealand website](#). For help with requesting mediation you can call the Employment New Zealand contact centre on 0800 20 90 20.

### What are the legislative exceptions?

If an employee has to take a specific break under legislation, that legislation applies instead of any break entitlement under the Employment Relations Act.

For example, the [Land Transport Rule: Work Time and Logbooks 2007](#) made under the Land Transport Act 1998.



## Which employers are exempt from the rest and meal breaks specified in the Act?

The Act provides an exemption from providing set rest breaks and meal breaks in certain circumstances for essential services or employers that engage in New Zealand’s national security. The exemption applies in the following two situations, if all the conditions are met:

If the employer is engaged in an essential service (a service specified in Schedule 1 of the Employment Relations Act 2000) ; and	OR	If the employer is engaged in the protection of New Zealand’s national security; and
continuity of service or production in the essential service is critical to the public interest, including (without limitation) services affecting public safety; and		continuity of service is critical to New Zealand’s national security; and
the employer would incur unreasonable costs in replacing an employee, employed in the essential service, during the rest breaks and meal breaks— (i) with another person who has sufficient skills and experience; and (ii) without compromising public safety.		the employer would incur unreasonable costs in replacing an employee, employed in the protection of New Zealand’s national security, during the rest breaks and meal breaks— (i) with another person who has sufficient skills and experience; and (ii) without compromising New Zealand’s national security.

Where the exemption applies, an employer and employee can agree to breaks being taken in a different manner (including the number and timing of breaks) than the set breaks.

## What happens if you’re an exempt employer and can’t reach an agreement?

If an exempt employer and an employee cannot agree to alternative breaks, the employee is entitled to compensation. The compensation must be reasonable and designed to compensate for the failure to provide set breaks. This may include:

- time off work at an alternative time during the employee’s work period (for example allowing a later start time or an earlier finish time, or an accumulation of time off work);
- or
- financial compensation; or
- both time off work at an alternative time and financial compensation.

If the compensation is time off work at an alternative time, this must be equivalent to and provided on the same basis as the break entitlement the employee would have otherwise received.

If the compensation is financial compensation this must be calculated at the employee’s ordinary rate of pay, or for an employee on variable rates (such as being paid a piece rate), the rate must be the employee’s average rate of pay in the relevant work period.

Compensation could also include a mixture of time off work and financial compensation, as long as the compensation together is equivalent to the entitlement the employee would have otherwise received



## **What should I do if my employer does not allow me to take rest and lunch breaks?**

Employees should talk to their employer first if they believe they are not allowed their entitled breaks.

The Labour Inspectorate expects employers and employees to work out how and when to take applicable breaks. Union members can seek help from their union. If they fail to agree, they can contact us for [mediation](#).

The [Employment Relations Authority](#) can determine the matter if mediation fails.

For serious breaches the Labour Inspectorate would likely seek penalties.