

## Splitting Up Meal Breaks: A Bad Idea

Our subscribers often ask us if they can split up an employee's meal break. For example, if an employee has a meeting or training session that interferes with the 30-minute lunch break, can you as an employer have the person take 15 minutes after five hours worked, and then take the other 15 minutes later on?

It's a bad idea, to say the least. California law requires that non-exempt employees be provided with an unpaid meal period of at least 30 minutes for every five hours worked. As a general rule, this meal period must consist of uninterrupted, off-duty time during which an employee is not required to work and is free to attend to his or her personal affairs. Because the law mandates that an employee be relieved of all work-related duties during a meal period, an employer cannot require an employee to split up his or her 30-minute meal period to attend a meeting or training session.

California employers, in fact, have been advised to go one step further and take steps to ensure that employees do not even voluntarily split up their 30-minute meal period. One California Court of Appeal (in *Cicairos v. Summit Logistics, Inc.*) held that employers have an affirmative obligation to ensure that employees take their full 30-minute meal periods.

A different California Court of Appeal recently held otherwise, distinguishing the facts of the *Cicairos* case. In this new case, *Brinker Restaurant Corp. v. Superior Court*, the court ruled that employers must make meal periods available to employees and cannot impede, discourage, or dissuade employees from taking meal periods.

However, said the *Brinker court*, once the employer has made the meal period available, an employer is not obligated to police the employee's use of that time by ensuring that the employee takes the meal period. The state legislature has indicated an intent to clarify the law on this issue, and there will surely be more activity on this front in the future. At a minimum, however, you should be sure that you are doing nothing to prevent employees from taking their full 30-minute meal periods uninterrupted.

If you really need an employee to be able to split up his or her 30-minute meal period for a work-related purpose, you can ask the



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employee to agree to take a paid, "on-duty" meal period. But this option is available only when: (1) when the nature of the work prevents an employee from being relieved of all duty; and (2) when the employer and employee agree, in writing, to an on-duty, paid meal period. The Division of Labor Standards Enforcement (DLSE) has been very strict in its interpretation of the "nature of work" exception, taking the position that an off-duty meal period is required unless it is "virtually impossible" for the employer to provide the employee with an off-duty meal period.

We recommend that you utilize all means available to ensure that employees take an uninterrupted, off-duty meal period of at least 30 minutes. Failure to comply with meal break law exposes employers to significant liability. Labor Code 226.7 requires employers to pay employees one additional hour of pay at the employee's regular rate of compensation for each work day that a 30-minute meal period is not provided.

Given the recent rise in legal challenges to meal break policies and practices, you should do everything possible to comply with the law, and to maintain time records so that you can prove your compliance later on.

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