

Atkinson, Andelson, Loya, Ruud & Romo

A Professional Law Corporation



California Dump Truck Owners Association

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Meal and Rest Periods

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SUMMARY OF CALIFORNIA'S MEAL AND REST PERIOD REQUIREMENTS

Meal Periods

- The meal period requirements are set forth in Labor Code § 512 and Industrial Welfare Commission (IWC) Wage Orders.
- A thirty (30) minute off-duty meal period must be provided to all employees who work more than five (5) hours.
- Employees who work six (6) hours or less may waive the meal period.
- The first meal period must be taken before the end of the fifth hour of work. Wage Order 1, which covers the manufacturing industry, allows the parties to a collective bargaining agreement to agree to a meal period after six (6) hours of work.
- Employees who work more than ten (10) hours must be provided a second meal period, except if the total hours worked is no more than twelve (12) hours.
- Unless the employee is relieved of all duty to take a full thirty (30) minute meal period, the meal period is counted as hours worked which must be compensated at the employee's regular rate of pay.
- The burden is on the employer to ensure that the employee takes the meal period.
- Meal periods must be recorded.
- An on-duty meal period is permitted only when the nature of the work prevents the employee from being relieved of all duty and the employer and employee enter a written agreement agreeing to the on-duty meal period, which states that it may be revoked. The Labor Commissioner takes the position that the IWC Wage Orders and Labor Code § 512 preclude two on-duty meal periods in any one day.
- For each workday that the employer fails to provide the required meal period, the employee is entitled to one (1) hour of pay at the employee's regular rate of pay. The extra hour is not counted for overtime purposes.

- No matter how many meal periods are missed only one meal period payment is imposed each day.
- In all places where employees are required to eat on the premises, a suitable place for that purpose must be designated. This does not apply to Wage Order 16, which applies to on-site occupations in the construction, drilling, logging, and mining industries.
- Under all of the wage orders, except Wage Orders 12, 14, 15, and 16, if a meal period occurs on a shift beginning or ending at or between the hours of 10 p.m. and 6 a.m., facilities must be available for securing hot food and drink or for heating hot food or drink, and a suitable sheltered place must be provided in which to consume such food or drink.
- In the motion picture industry, employees may work no longer than six (6) hours without a meal period of not less than thirty (30) minutes and nor more than one (1) hour. A subsequent meal period must be called not later than six (6) hours after the termination of the preceding meal period.
- Wage Order 16 allows an opt-out from the meal period requirements if contained in a qualified collective bargaining agreement. A recent decision by the California Court of Appeal, however, declared this opt-out provision to be unenforceable due to its having been adopted in violation of the express provisions of Labor Code § 516 which does not allow the IWC to adopt meal period requirements that are inconsistent with Labor Code § 512. *Bearden v. Borax*, 138 Cal.App.45h 429 (2006)
- Additional exceptions exist for union employees in the baking, motion picture and broadcasting industries; and public agencies employing unionized commercial motor vehicle operators.

Rest Periods

- The rest period requirements are set forth in the wage orders issued by the Industrial Welfare Commission.
- Employers must “authorize and permit” all employees to take a ten (10) minute net rest period for every four (4) hours of work, or major fraction thereof.

- Anything more than two (2) hours is a “major fraction” of hour. However, rest periods need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours.
- Insofar as practicable, rest periods should be taken in the middle of each four (4) hour work period.
- The rest period is paid and counted toward hours worked.
- Rest periods do not have to be recorded.
- Employees can be required to remain on the premises during rest periods.
- The rest period is a net ten minutes, meaning that the rest period begins when the employee reaches an area away from the work station that is appropriate for rest.
- For each workday that the employer fails to provide the required rest periods, the employee is entitled to one (1) hour of pay at the employee’s regular rate of pay. The extra hour is not counted for overtime purposes.
- No matter how many rest periods are missed only one rest period payment is imposed each day.
- Wage Order 16 contains exceptions which allow the employer to “stagger” the rest periods to avoid interruption in the flow of work and to maintain continuous operations, or to schedule rest periods to coincide with breaks in the flow of work that occur in the course of the workday.
- Wage Order 16 provides that parties to a collective bargaining agreement may chose to opt-out of the rest period provisions if the collective bargaining agreement provides “equivalent protection” for the workers.

CAUTION: Employers should not use or adopt these or any other statements without the prior of counsel.

MEAL AND REST PERIOD OBLIGATION ACKNOWLEDGMENT

I understand that California law and Company policy require that I take a meal period of no less than 30 minutes whenever I exceed five hours in a work day. The meal period must begin before I exceed five hours of work. I understand that this is an unpaid, off-duty meal period and that I may not perform any work during this period.

I also understand that I am entitled to a rest period at the rate of 10 minutes net rest for every four hours of work or major portion of four hours. I further understand that the rest period should be taken as close to the middle of each work period as possible. I understand that rest period time will be counted as hours worked.

I understand that a violation of these requirements constitutes a violation of the law and Company policy and therefore, that I may be subject to discipline, up to and including termination, if I violate this policy.

If I am denied a meal or rest period to which I am entitled, or if I fail to take a meal or rest period as required by law and my employer's policies, I agree to notify _____ within 24 hours so that the matter can be fully investigated and appropriate corrective action can be taken.

I acknowledge that I have read this policy, I understand the rules regarding meal periods and rest periods, and I agree to adhere to its provisions.

EMPLOYEE'S NAME: _____

SIGNED: _____

DATE: _____

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SAMPLE TIME CARD ACKNOWLEDGMENT
FOR MEAL AND REST PERIODS

This acknowledgment should be printed on the employees' time card and should be signed by the employees when they turn in their time card at the end of their pay periods.

I hereby attest that the time and hours recorded on this time record accurately and fully identify all time that I have worked during the designated pay period. I further acknowledge that I have taken all meal periods and rest periods to which I am entitled under the law during the pay period, including one ten minute rest period for every four hours worked or major fraction thereof and one 30 minute duty-free meal period whenever I worked five or more hours. I further acknowledge that I have not violated the Company's policy against working unauthorized overtime during this period.

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AGREEMENT FOR ON-DUTY MEAL PERIOD

This will certify that the nature of the work that I perform for the Company prevents me from being relieved of all of my work duties during my regularly - scheduled meal period.

In accordance with the requirements of state law, I hereby voluntarily agree to an on-the-job meal period, during which I may eat but will not be relieved of all of my work duties. I further understand that such on-the-job meal period shall be paid working time, for which I will be paid by the Company at my regular straight-time rate.

I also understand and agree that I or the Company may revoke the Agreement for On-Duty Meal Period at any time by providing at least (1) day's advance notice in writing of the decision to do so. This waiver will remain in effect until I exercise, or the Company exercises, the option to revoke it.

I acknowledge that I have read this agreement, understand it, and voluntarily agree to its provisions.

Employee's Signature

Date

Employee's Name (print or type)

APPROVED AND ACKNOWLEDGED

Date

CAUTION: Employers should not use or adopt these or any other statements without the prior of counsel.

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Employment Law

Business and Commercial Litigation

Experience

Robert Roginson is a partner in the Cerritos office of Atkinson, Andelson, Loya, Ruud & Romo. Mr. Roginson practices traditional labor and employment law. Mr. Roginson advises employers with respect to wage and hour law, prevailing wage matters, labor relations and union matters, discrimination and harassment, and wrongful termination. Mr. Roginson litigates complex employment cases in state and federal court and has represented employers before numerous state and federal administrative agencies and in labor arbitrations.

Mr. Roginson is well-regarded for his representation of employers in wage and hour matters, particularly class actions involving claims for unpaid overtime, off-the-clock work and meal & rest periods. He represents employers in all industries with an emphasis on the transportation industry, construction industry, and the security industry.

Mr. Roginson has acted as lead counsel in over 20 class actions involving putative classes from as small as 50 to over 2,000 employees. Mr. Roginson successfully defeated class certification in a wage and hour prevailing wage lawsuit against a contractor and a wage and hour case brought by waiters and busboys against their restaurant employer.

Mr. Roginson specializes in union sponsored litigation and has represented garment manufacturers in a wage and hour class action brought by UNITE, a transportation company in a meal and rest period class action by the Teamsters Union, and various construction companies in prevailing wage and apprenticeship class action lawsuits financed and driven by the building and construction crafts.

Mr. Roginson focuses on bringing creative solutions to complex legal problems. In 2004, he negotiated an industry-wide settlement with the California Labor Commissioner on behalf of the ready mix concrete industry concerning meal periods taken by ready mix concrete truck drivers.

Mr. Roginson obtained a summary judgment ruling that a contractor was not required to pay prevailing wages on a jail improvement project and successfully defended an appeal of the decision. Mr. Roginson also obtained summary judgment against a union on behalf of two non-union contractors that such contractors have no obligation to comply with union apprenticeship requirements.

Prior to joining Atkinson, Andelson, Loya, Ruud & Romo, Mr. Roginson worked in the industrial relations department for the Associated General Contractors of California, where he represented construction contractors in labor grievance and arbitration matters in addition to participating in the negotiation of the Southern California Basic Trades Master Labor Agreements.

Education

Mr. Roginson earned his undergraduate degree in Philosophy at Georgetown University. He graduated with his Juris Doctor from Loyola Law School in Los Angeles, and joined Atkinson, Andelson, Loya, Ruud & Romo in 1995.

Admission

1996, California

Membership

State Bar of California

Publications and Speaking Engagements

Mr. Roginson is a board member of the Associated General Contractors of California (AGC), San Bernardino and Riverside District and the Engineering Contractors Association. He also currently serves as the Chairman of the AGC Legal Advisory Committee. He lectures before professional organizations and contributes to publications on topics of employment and labor relations.