



[A STRATEGIC GUIDE]

Navigating Non-Exempt Employee Meal Break Laws



This content was written with the help of experts at Littler Mendelson, the largest labor and employment law firm in the United States.

It's no secret that many states have strict laws related to employee meal breaks. In California, for example, employers must provide employees with an uninterrupted 30-minute meal break for every five hours worked.

But for employers looking to provide unpaid meal breaks to their non-exempt employees, compliance can be complicated. Subsequently, failure to comply can be costly. Why? Because merely scheduling an employee for a 30-minute meal break, without more, is simply not enough to ensure compliance.

It's why employers must take proactive steps to ensure employees:

1. Take their full meal breaks
2. Are relieved of all duties
3. Are not impeded or discouraged from taking their full, uninterrupted meal breaks

But taking these steps is just the start. Additionally, employers should also collect and keep data they can use to prove compliance in case of a legal claim. And with technology transforming compliance opportunities for employers, a variety of tools can now be used to avoid being swept away in the wave of litigation involving meal break violations.



Let's dive deeper to learn how employers can work to ensure compliance.

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What Can Employers Do to Try to Help Ensure Compliance?



To help employers get started, we've outlined several steps employers can take to help ensure compliance with meal break requirements.

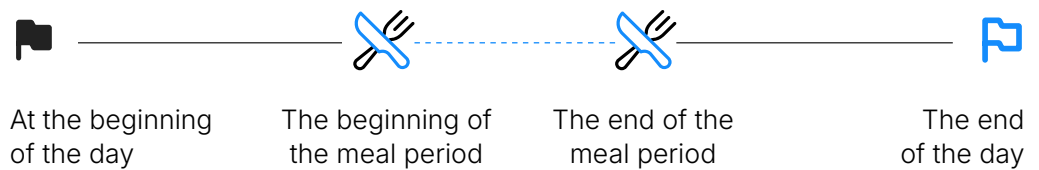
Appoint A Meal Period of at Least 30 Minutes for All Non-Exempt Employees

The meal period should be scheduled when the employee would normally eat lunch. In California, the meal period must begin no later than the end of the fifth hour of work.



Adopt A Down-To-The-Minute Timekeeping System

Employers should adopt a timekeeping system that records (and then pays) down-to-the-minute time punches at four different events during an eight-hour workday (more for a longer workday), including:



Within this timekeeping system, employers should not use automatic time deductions from timecards for a meal period. Why? Because “auto-deduct” timekeeping systems have been the subject of many class-action lawsuits. They present a higher degree of risk than timekeeping systems that accurately record meal periods taken. In fact, courts have held that by keeping exact time records that are tracked to the minute and following the law by supplying meal periods, employers can overcome presumptions of meal break violations. Employers can then offer such records as an affirmative defense that employees were genuinely relieved from duty during meal periods.

Ensure No Duties are Performed During the Meal Period

Employers should make it clear to employees and their supervisors that no duties are to be performed during the meal period. Unless the employee is relieved of all duty during their 30-minute meal period, the meal period is considered an “on duty” meal period that is counted as hours worked. Hours worked must be compensated for at the employee’s regular rate of pay.

Employers must be trained to recognize what activities are considered work and the importance of recording all work time. Accurate time entries are consistent if employees are trained. Trained employees also help avoid issues related to supervisors ignoring or even encouraging off-the-clock work.

Supervisors must also be aware of which activities are considered work time so that they can ensure that all time worked is recorded. Supervisors are in the best position to understand changes in work activities that may affect an employer’s wage and hour responsibilities.

Be Sure Your Timekeeping System Has Certain Features

Employers should be sure the timekeeping system they're implementing includes a feature prompting employees who punch in or out of a non-compliant meal period to say why. If the employee writes a reason attributable to the employer, the employer should pay for the meal period, if appropriate.



If the employee writes a reason attributable only to him or her, then the meal period can be unpaid.

In addition to the drop-down feature, employees should provide written attestations to their time entries' accuracy and compliance daily.

Be Clear on What Employees Can and Should do During Meal Breaks

Make it clear that employees are free to and should leave their posts during the meal period and relinquish all duties. A relevant court decision held that an employer's policy of requiring manufacturing employees to remain on premises during meal breaks transformed an off-duty meal break into an on-duty meal period.

This meal break counted as hours worked subject to the employer's control. The court cautioned that "when an employer directs, commands, or restrains an employee from leaving the workplace during his or her lunch hour and thus prevents the employee from using the time effectively for his or her own purposes, that employee remains subject to the employer's control."



Limited Circumstances May Be Allowed

In certain limited circumstances for California employees, an employee may be allowed to have an “on-duty” meal period. But this time must be paid at the worker’s regular rate of pay. An “on-duty” meal period is a “limited alternative” to the off-duty meal period requirement.

“On-duty” meal periods can only be lawfully provided when the following three conditions are satisfied:

- The nature of the work prevents an employee from being relieved of all duties
- There’s a written agreement between the parties that an on-the-job paid meal period is agreed to
- The written agreement must say that the employee may, in writing, revoke the agreement at any time.

An employee who regularly works alone at a convenience store or a physical security guard working alone at a remote site may qualify. But employers must ensure strict compliance with the required conditions.



If these conditions are met, employees are only bound to pay the employee for time worked.



If the conditions are not met, employers could be liable for up to two hours of premium pay per day per employee. And some employers have even started automatically paying an extra hour for a missed meal break by California employees to keep this liability at bay.

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What's Next in the Future of Break Management?



Employers should be planning for and thinking about the future, and emerging trends related to break management.

Here are a few trends they should consider:

1 Remote Workforce Tracking

If the employee writes a reason attributable only to him or her, then the meal period can be unpaid. In addition to the drop-down feature, employees should provide written attestations to their time entries' accuracy and compliance daily.

2 Harnessing Data

Employers should analyze the data they collect to conduct proactive audits and correct when issues are discovered. For example, an employer should be alerted that an employee has missed five of his last eight meal breaks and take the proper steps to find out why.

3 Looking For Data Trends

Employers can proactively look for trends in the data. Does one manager have a much higher or lower number of missed meal breaks than their peers? Is one region incurring too much overtime? Proactively harnessing the data is a possible solution.

4 Meal Break Timing Tracking

Some states, including California, require employers to provide employees with a meal break at a certain time during their shifts (e.g., no later than five hours into a shift). Litigation of these issues is likely to increase in the coming months and years. All the while, employers will be expected to prove down to the second that their employees' meal breaks were taken at the correct time during their shifts.

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Leveraging Technology for Meal Break Compliance

The time is now to use technology to effectively manage shifts and meal and rest breaks. The right technology will help employers accurately record time worked versus time on break or rest.

And connecting time worked to time earned at the proper pay rates is crucial for those employers are looking to maintain compliance and avoid costly litigation.

Learn more about how you can **future-proof your business** and remain compliant with meal break laws.

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[THANKS!]

550 Reserve
Street Suite 190
Southlake, TX 76092
+1 845-474-0033

www.trackforce.com

