



**There has been a lot of talk in California about meal breaks lately and a lot of heartburn over this. The definition of what is a meal period is taken directly from the Department of Labor (standards enforcement page). I hope this helps!**

**Wes**

## **Meal periods**

In California, an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. [Labor Code Section 512](#). There is an exception for employees in the motion picture industry, however, as they may work no longer than six hours without a meal period of not less than 30 minutes, nor more than one hour. And a subsequent meal period must be called not later than six hours after the termination of the preceding meal period. [IWC Order 12-2001, Section 11\(A\)](#)

Unless the employee is relieved of all duty during his or her thirty minute meal period, the meal period shall be considered an "on duty" meal period that is counted as [hours worked](#) which must be compensated at the employee's [regular rate of pay](#). An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the employer and employee an on-the-job paid meal period is agreed to. The written agreement must state that the employee may, in writing, revoke the agreement at any time. [IWC Orders 1 -15, Section 11, Order 16, Section 10](#). The test of whether the nature of the work prevents an employee from being relieved of all duty is an objective one. An employer and employee may not agree to an on-duty meal period unless, based on objective criteria, any employee would be prevented from being relieved of all duty based on the necessary job duties. Some examples of jobs that fit this category are a sole worker in a coffee kiosk, a sole worker in an all-night convenience store, and a security guard stationed alone at a remote site.

If the employer requires the employee to remain at the work site or facility during the

meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. *Bono Enterprises, In. v. Bradshaw* (1995) 32 Cal.App.4<sup>th</sup> 968.

If an employer fails to provide an employee a meal period in accordance with an applicable [IWC Order](#), the employer must pay one additional hour of pay at the employee's [regular rate of pay](#) for each workday that the meal period is not provided. [IWC Orders](#) and [Labor Code Section 226.7](#). This additional hour is not counted as [hours worked](#) for purposes of overtime calculations.

In all places where employees are required to eat on the premises, a suitable place for that purpose must be designated. This requirement does not, however, apply to employees covered by [IWC Order 16-2001](#), on-site occupations in the construction, drilling, logging and mining industries.. For employees covered by [IWC Order 16-2001](#), the employer must provide an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.

Under all of the [IWC Orders](#) except Orders 12, 14, 15, and 16-2001, 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 food or drink, and a suitable sheltered place must be provided in which to consume such food or drink. Under [IWC Order 12-2001](#) for employees in the motion picture industry, hot meals and hot drinks must be provided for employees who are required to work after 12 o'clock midnight, except off-production employees regularly scheduled to work after midnight.