

WE KNOW

# HUMAN RESOURCES

## BREAKS & INFANT FEEDING

QUICK GUIDE

This Quick Guide provides summarised information on employers' obligations to provide breaks and make arrangements for infant feeding in the workplace.

### INTRODUCTION

The Employments Relations Amendment Act 2014 took effect from 7 March 2015 and introduced (inter alia) less prescriptive, more flexible arrangements relating to meal and rest intervals for employees. Existing provisions relating to breaks for those who wish to breastfeed (or express milk) at work remained unchanged.

### REST AND MEAL BREAKS

Employers must provide all employees with meal and rest breaks which provide a reasonable opportunity during each work period for rest, refreshment and attention to personal matters and must be appropriate for the duration of the employee's work period.

A "work period" runs from the time when the employee commences work and ends when the employee ceases work in accordance with the employee's terms and conditions of employment. All authorised breaks (whether paid or not) are included within the definition of work period.

Rest periods provided in accordance with the Act must be paid whilst meal breaks are not required to be paid.

#### Timing and Duration of breaks -

The time of taking breaks and their duration are matters to be determined by agreement between an employer and each employee acting in good faith. Employers must provide a reasonable opportunity for negotiation and reaching agreement.

If agreement cannot be reached, an Employer, acting in good faith, may specify such reasonable times and durations as are appropriate having regard to the Employer's operational environment, resources and the employee's interests, that enable the employer to maintain continuity of service or production.

#### Breaks not required in certain circumstances – 'Compensatory Measures' –

An employer will be exempt from the obligation to provide rest and meal breaks in two circumstances –

- a) When the employer and employee agree that the employee will be provided with 'compensatory measures', or

Having regard to the nature of the work performed by the employee, the employer cannot reasonably provide the employee with rest and meal breaks - in which case the employer must provide 'compensatory measures'.

#### Compensatory measures – what are they?

'Compensatory measures' is not a term exclusively defined or constrained by the Act other than to state that they must be reasonable. However, the Act anticipates that the term will include measures that involve taking time off work at an alternative time and in that case will be deemed to be reasonable if the employee is

provided with an equivalent amount of time and on the same basis as would have otherwise have been available to the employee.

**Other considerations**

Whilst the amendments introduced by the 2014 Amendment Act allow greater flexibility than was previously available, employers should take care to ensure that in implementing these provisions, close regard is paid to ensure compliance with their broad health and safety obligations and in particular to the general duty not to unreasonably expose an employee to risk of harm. In this context employers will need to be assured that any agreement for compensatory measures entered into with their employees or adopted by the employer does not create or potentially create, a hazard, such as fatigue, without appropriate risk management strategies being in place.

**Existing arrangements –**

Unless an employer desires to introduce any changes to existing practices there is no requirement to take any action as a result of the changes to the law. Arrangements for meal and rest breaks which met the requirements of the law prior to the amendment will in all likelihood be adequate under the new law unless circumstances in the workplace change.

**INFANT FEEDING**

Employers are required to provide facilities and breaks for employees (as long as it is reasonable and practicable to do so) who wish to breastfeed in the workplace or during work periods. Unless otherwise agreed, breaks for breastfeeding that occur beyond the entitled rest breaks do not need to be paid.

A Code of Practice was published by the Dept. of Labour in March 2010. The Code gives employers guidance on the factors to consider when negotiating a breastfeeding arrangement with an employee. It gives practical advice on facilities, length and timing of breaks, health and safety, and resources and space for employees who wish to breastfeed. The code was developed by the (then) Department of Labour in consultation with Business New Zealand, the New Zealand Council of Trade Unions, women's community and health groups and the Ministry of Health.

The Code can be found at - <http://www.dol.govt.nz/er/holidaysandleave/parentalleave/infantfeeding/code.asp>

Supporting information and resources are available at - <http://www.dol.govt.nz/er/holidaysandleave/parentalleave/infantfeeding/index.asp>

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For further information regarding Breaks & Infant Feeding or other aspects of Employment Relations, please contact the Canterbury Employers' Chamber of Commerce, email [info@cecc.org.nz](mailto:info@cecc.org.nz) or phone 03 366 5096.