

## **Meal and Rest Periods Frequently Asked Questions (FAQ)**

Labor Law Section 162 sets forth the required meal periods for employees in New York State.

Factory Workers are entitled to a 60-minute lunch break between 11:00 a.m. and 2:00 p.m. *and* a 60-minute meal break at the time midway between the beginning and end of the shift for all shifts of more than six hours starting between 1:00 p.m. and 6:00 a.m. and lasting more than six hours.

Non-Factory Workers are entitled to a 30-minute lunch break between 11:00 a.m. and 2:00 p.m. for shifts six hours or longer that extend over that period *and* a 45-minute meal break at the time midway between the beginning and end of the shift for all shifts of more than six hours starting between 1:00 p.m. and 6:00 a.m.

All Workers are entitled to an *additional* 20-minute meal break between 5:00 p.m. and 7:00 p.m. for workdays that extend from before 11:00 a.m. to after 7:00 p.m.

Section 162 also allows the Commissioner to permit shorter meal periods upon application by the employer and if the Commissioner believes such modifications are warranted by special circumstances.

### **Who is covered by Section 162 of the Labor Law?**

All private and public sector employers and their employees who work in New York State are covered by the law. However, the law contains different requirements for factory workers and non-factory workers.

### **Who is a factory worker?**

Section 162 has different meal period requirements for persons “employed in or in connection with a factory.” A factory includes a mill, workshop, or other manufacturing establishment and includes all buildings, sheds, structures or other places used for or in connection with these establishments. A factory does not include dry dock plants engaged in making repairs to ships, power houses, generating plants and other structures owned or operated by a public service corporation. Any employee who works in or whose primary duties involve the maintenance and/or operation of a factory is a factory worker for the purposes of Section 162 of the Labor Law.

### **Where only one employee is on duty, is that employee required to be provided with an uninterrupted meal period?**

In some instances where only one person is on duty or is the only one in a specific occupation, it is customary for the employee to eat on the job without being relieved. The Department of Labor will accept these special situations (The “One-Employee Shift” exception) as compliance

with Section 162, where the employee voluntarily consents to the arrangements. However, an uninterrupted meal period must be afforded to every employee who requests this from an employer prior to consenting to the arrangement.

To demonstrate that voluntary consent to such one-employee shifts has been given, an employer must explain to the employee that:

- The nature of the industry in which the employer operates necessitates one-employee shifts
- The employee's meal periods may be interrupted

The employer must then obtain an acknowledgement, preferably in writing, by the employee, either:

- When the employee is hired
- Before the time the employee would be expected to give up his/her uninterrupted meal periods

An employer cannot use mere acceptance of a job or continued employment without objection as an acknowledgement. If an employee works through a meal period due to one-employee shift requirements, the *employee must be paid* for such meal period. Once an affirmative acknowledgement is given by an employee, it cannot be revoked without a change in circumstances.

### **Are employees required to be paid for meal period time?**

Meal periods that meet statutory requirements are not required to be counted as "hours worked" and employees are not required to be paid for such time. (See answer above for situations in which employees work through meal periods.)

### **Are 'brown bag lunches' permissible in New York State?**

"Brown bag lunches" are where employees eat their lunch while listening to a speaker or some sort of presentation. The topics of such lunches may be work-related or not related to work (e.g. related to health and wellness issues, personal finances, retirement). Employees must be allowed an uninterrupted meal period and must be free to leave their work area(s) and engage in other pursuits.

If employees are required by their employers to attend such working or brown bag lunches (typically on topics related to work), they do not count as a meal period and must also be counted as time worked. Employees who voluntarily choose to attend such lunches on topics, are receiving a meal period under the law.

### **May employees consent to not taking a meal period?**

The New York State Court of Appeals, New York's highest court, held that, in a situation where there was a collective bargaining agreement that provided for a waiver of statutory meal periods in exchange for additional breaks and meal periods scheduled at other times, employees may waive their rights under the Labor Law. Such waivers must include the following:

- The operational needs of the industry make strict compliance with the meal period provisions impractical
- The waiver was obtained openly and knowingly, absent of duress or coercion, through good faith negotiations
- The employees received a desired benefit through the negotiations in return for such a waiver

The Court of Appeals decision, *ABC Broadcasting v. Roberts*, can be found at 61 N.Y.2d 244 (1984).

### **Does the Commissioner permit shorter time periods?**

The Department will permit a shorter meal period of not less than 30 minutes as a matter of course, without application by the employer, so long as there is no indication of hardship to employees. A meal period of not less than 20 minutes will be permitted only in special or unusual cases after investigation and issuance of a special permit.

### **How does an employer apply for a shorter time period?**

An application may be found on the Department's web site at the following link:  
<http://www.labor.ny.gov/formsdocs/wp/ls284.pdf>

### **May an employer require employees to remain at work during meal breaks?**

There is nothing in the Labor Law that requires that an employee be permitted to leave the work premises for the meal period, so long as the employee is completely freed from duties during the meal period. Employees must be completely relieved from duty for the purposes of providing meal periods and an employee is not relieved if he or she is required to perform any duties, whether active or in-active, during that period. While employees may remain at their desk or in their work area during a meal break, they must be effectively relieved of their duties during that period. In general, employees who are required to remain at their desk or workstation during meal periods are not considered to be completely relieved of their duties.

It is important to note, however, the one-employee shift exception discussed above allows for a general exception to this rule.

### **May employers round starting and stopping time for counting meal period requirements?**

**Yes.** Rounding of time is a practice where employers will round the beginning and/or end of a shift or meal period to an interval. For example, rounding occurs when an employee arrives at work at 8:02 and the time records note that the employee arrives at 8:00. The Department follows the principles set forth in federal regulations (29 CFR §785.48(b)) with regard to the rounding of time. That regulation recognizes that rounding is commonly accepted in industry at intervals ranging from 5 to 15 minutes and permits such rounding. Extending this rounding regulation to the meal period requirements is proper, so long as rounding of starting and stopping time for the counting of meal period requirements does not, over a period of time, result in a failure provide employees with the required meal periods. In short, rounding of time is permissible as long as it does not result in employees losing time.

### **Must employees be paid for breaks and rest periods?**

While the Labor Law does not require that employers provide rest periods of short duration, if they are provided to or taken by employees, they must be counted as working time. The Department follows Federal Regulation 29 CFR §785.18 which provides that rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that:

- The authorized break may only last for a specific length of time
- Any extension of the break is contrary to the employer's rules
- Any extension of the break will be punished

### **Can employees have the option of either having meal break or leaving work earlier at the end of a shift?**

As discussed above, employees may waive their rights to a meal period under Section 162 only if the requirements of the waiver set forth by New York courts are met. Furthermore, the option of leaving early does not constitute a sufficient employee benefit upon which to satisfy the third of those requirements, as it merely substitutes time off during a workday for time off at the end of a workday. This does not mean that an employer and employee cannot agree that the employee may work through a meal period in exchange for being able to leave work early on an occasional basis due to employee needs. However, the employer and employee cannot agree to such a situation on a long-term, regular basis.