

## CALIFORNIA MEAL PERIOD AND REST BREAK Q&A

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### Meal Periods

#### **Q1. Do employees have to punch/sign out and in for meal periods?**

Absolutely. This documentation is critical to confirm employees have received their 30-minute meal period as required by state law.

#### **Q2. Can I require an employee to work through her meal period if I pay her for the time?**

No. Generally, the 30-minute meal period may not be waived by the employee, even if the waiver is “voluntary.”

For an employee whose shift is more than five (5), but not more than six (6) hours, the meal period may be waived by mutual consent, but such consent must be voluntary and documented in writing on the Company’s approved form. Please contact Human Resources for guidance and the meal period waiver agreement form.

In addition, if an employee works sufficient hours to entitle her to a second 30-minute meal period, she may voluntarily waive that second meal period if she does not work more than 12 hours and has not waived her first meal period. The meal waiver must be voluntary and documented in writing on the Company’s approved form. If an employee wants to waive her second meal period, please contact Human Resources for guidance and the meal period waiver agreement form.

#### **Q3. Can I require an employee to take a meal period at his workstation?**

No. Under normal circumstances, an employee must be relieved of all work duties during the 30-minute meal period. Under extremely limited circumstances, the law provides for an “on-duty” meal period. In order for an on-duty meal period to be permitted, the nature of the work must actually prevent the employee from being relieved of all duty, and there must be a written agreement for an on-the-job paid meal period on the Company’s approved form.

If you wish to explore the possibility of an on-duty meal period for one or more of your employees, please contact Human Resources and the Law Department for guidance. If approved, you will be provided an on-duty meal period agreement form.

The unit being too busy to relieve an employee of all duties for a 30-minute meal period does not meet the criteria for an on-duty meal agreement.

#### **Q4. Can I allow an employee to work through his meal period so that he can leave work**

### **30 minutes early?**

No. Working through a meal period does not entitle an employee to leave work prior to his scheduled quitting time.

### **Q5. Can I allow an employee to combine one of her two 10-minute rest breaks with her 30-minute meal period to create a 40-minute meal period?**

No. You cannot allow employees to combine the meal period and the rest break because the law requires the employer to provide separate meal periods and rest breaks.

### **Q6. If an employee works more than 10 hours and both her meal periods are late, do I pay 2 additional hours of pay?**

No. The employee would only be entitled to one hour of additional pay for a meal period premium payment even though both meal periods are non-compliant. Likewise, if one meal period was short and one meal period was late, only one hour of additional pay would be required. If an employee had a missed or non-compliant meal period and a missed or short rest break, two additional hours of pay as a premium payment would be due.

### **Q7. I have an employee who wants to take a late meal period. If she is willing to put the request in writing, is it OK?**

No. The employee cannot request a later meal period even if she is willing to put it in writing.

### **Q8. Can I require my employees to stay on the work premises during their meal periods?**

No. You cannot require employees to remain on premises during their meal periods.

### **Q9. All my employees start at the same time each day. Do I have to give them their meal period at the same time?**

No, employees are not required to have the same meal period if they start their shift at the same time. All employees' meal periods should be scheduled and begin before they complete 5 hours of work (must begin by 4 hours and 59 minutes into the employee's shift). For example, some employees could be scheduled to start their meal period 4 hours into the shift and others 4 ½ hours into the shift. Staggering meal periods provides constant coverage in the unit. Make sure all employees are scheduled and begin their meal periods on or before 4 hours and 59 minutes into their respective shifts.

### **Q10. Am I allowed to adjust the schedule for meal periods from one workday to the next, or does the meal period schedule need to be fixed?**

There is no requirement that the scheduling of meal periods be fixed. The law permits flexibility in scheduling meal periods on a day-to-day basis based on the employer's operational needs as long as the meal period starts before the employee completes 5 hours of work (by 4 hours and 59 minutes into the employee's shift) and the second meal period, if eligible, starts before the employee completes 10 hours of work (by 9 hours and 59 minutes into the employee's shift). This is to avoid interruption in the flow of work and to maintain continuous operations.

**Q11. If an employee starts a meal period before completing 5 hours of work, but is interrupted to do work, and we later provide the employee with a 30-minute, uninterrupted meal period that begins after the employee completes 5 hours of work, do I still have to pay the employee the one-hour meal period premium payment?**

Yes. The employee did not receive a 30-minute, uninterrupted, duty-free meal period that began before the employee completed 5 hours of work (which is 4 hours and 59 minutes into the shift). Therefore, you must pay the employee the one-hour meal period premium payment in addition to the time worked.

**Q12. How do I ensure that employees are receiving and taking their required meal periods?**

Scheduling meal periods and posting the meal period schedule helps ensure employees receive their required meal periods. Review time records daily if possible. If the time records reveal: (1) no clock/sign out and/or in for the 30-minute meal period, (2) a meal period is less than 30 minutes, (3) a meal period started after the completion of 5 hours of work (did not start by 4 hours and 59 minutes into the shift), (4) a second meal period was not taken during a shift of more than 10 hours, or (5) the second meal period started after the completion of 10 hours of work (did not start by 9 hours and 59 minutes into the shift)

1. Discuss the time record with the employee and record the reason on the time record. Have the employee sign or initial the notation on the Punch Exception Log or any other document where time is recorded.
2. If the employee states that the missed, short or late meal period occurred because of personal reasons unrelated to work requirements, proceed with the appropriate constructive counseling step using the appropriate constructive counseling template (for union employees, follow the counseling process in the CBA). Remind the employee of the obligation to take meal periods according to Sodexo Live!'s California Meal Period and Rest Break Policy and review the policy with the employee again.
3. If the employee states that she did, in fact, take a meal period but forgot to clock/sign out or in, proceed with the appropriate constructive counseling step using the appropriate constructive counseling template. Remind the employee of the obligation to take meal periods according to Sodexo Live!'s California Meal Period and Rest Break Policy and to clock/sign out and in for their meal periods.
4. The employee must be paid one additional hour of pay at her regular rate of compensation (meal period premium payment) for each workday that one or more required meal periods are not provided, are less than 30 minutes, or are started late (after the employee completes 5 hours of work, which means the meal period did not start by 4 hours and 59 minutes into the shift) for the first meal period, or after the employee completes 10 hours of work (which means the meal period did not start by 9 hours and 59 minutes into the shift) for the second meal period).
5. Ensure all Punch Exception Logs or any other document where time is recorded are maintained with other time records and payroll registers for the pay cycle.

## Rest Breaks

### **Q13. Should I have my employees punch/sign out and in for rest breaks since they are duty free?**

No. Because rest breaks (although duty free) are paid, employees should not punch or sign out and in for rest breaks. Rest breaks should be scheduled, but not in the Company's timekeeping system, and managed on an individual basis. Employees should be approving their timecard at the clock or via whatever other means used to record their time on a pay cycle basis, confirming they received their meal periods and rest breaks as required by law.

### **Q14. Can I require my employee to stay on the premises during either of her 10-minute rest breaks?**

No. You are obligated to provide employees with duty-free rest breaks during which time the employee is relieved of all duties and permitted to leave the work premises. On-call rest breaks are strictly prohibited.

### **Q15. Can I allow an employee to waive either or both of her 10- minute rest breaks?**

No, we must make the rest break available to every employee who is required to have one.

### **Q16. What if an employee does not voluntarily waive a rest break, but still works through the rest break because of work demands or requirements? Is this a violation of the law?**

Yes. Sodexo Live! is liable for any missed rest breaks that are not voluntarily waived and would have been taken by the employee if it were not for work demands or requirements. The employee must be paid one hour of pay at the employee's regular rate of compensation as a rest break premium payment for each workday that one or more duty-free rest breaks are not made available to the employee.

### **Q17. Can I allow an employee to work through either or both of her rest breaks so that she can leave work 10-20 minutes early or arrive at work 10-20 minutes late?**

No. Working through a rest break does not entitle an employee to arrive late or leave work early. A rest break must be preceded and followed by some work period during the workday. Otherwise, it is not a rest break, but rather, merely a means of shortening the workday. The purpose of the rest break is to refresh workers during the workday. This purpose would be subverted by eliminating the rest break in exchange for a shorter workday. Because such an arrangement encourages the employee to waive her rest break, it is not allowed by law.

### **Q18. Can I allow employees to combine their two 10-minute rest breaks into one 20-minute rest break?**

No. Combining two 10-minute rest breaks into a 20-minute rest break is not allowed. Each rest break is intended as a separate break. Generally, the first 10-minute rest break precedes the meal period in the first 4-hour work period and the second 10-minute rest break follows the meal period in the second 4-hour work period. However, the sequencing of rest breaks may be determined by shift length and other factors. Flexibility with rest break timing does not change the requirement to provide the 30-minute meal period before the employee

completes 5 hours of work (must begin by 4 hours and 59 minutes into the shift).

**Q19. Are smokers entitled to additional rest breaks?**

No. Under California law rest break time is based on the total hours worked daily, and only one 10-minute rest break need be authorized for every four hours of work or major fraction thereof (which is defined as 2 hours).

**Q20. When an employee needs to use the restroom during her work period, does that count as her 10-minute rest break?**

No. The 10-minute duty-free rest break is not designed to be exclusively for use of the restroom. Rest breaks are intended to cover other personal needs as well, including taking a walk or stretching, making a personal phone call or smoking in a permitted area. The rest break is not to be confused with or limited to breaks taken by employees to use the restroom. Allowing employees to use the restroom during working hours does not meet Sodexo Live!'s obligation to make rest breaks available to eligible employees.

This is not to say, of course, that you do not have the right to reasonably limit the amount of time an employee may be absent from her workstation. It also does not mean that an employee who chooses to use the restroom while on an authorized break may extend the break time by doing so. The law simply prohibits an employer from requiring that employees count any separate use of the restroom as a rest break.

**Q21. When during the shift must the rest breaks be given?**

Generally, rest breaks should be made available as close to the middle of each 4-hour work period. However, if the nature or circumstances of the work prevent you from making the break available at the preferred time, the sequencing of rest breaks may be adjusted as long as the employee receives the total number of duty-free rest breaks per shift to which they are entitled.

**Q22. Am I allowed to adjust the schedule of rest breaks from one workday to the next, or does the schedule need to be fixed?**

There is no requirement that the scheduling of rest breaks be fixed. The law permits flexibility in scheduling rest breaks on a day-to-day basis based on the employer's operational needs. This is to avoid interruption in the flow of work and to maintain continuous operations. The law permits the scheduling of rest breaks to coincide with breaks in the flow of work that occur in the course of the workday.

## Scheduling for Non-Standard Shifts

**Q23. How does the policy apply to employees who are scheduled for split shifts?**

Employees working a split shift are entitled to the meal periods and rest breaks based on the number of hours in each individual work shift. For example, if an employee works 4 hours in the morning and another 4 hours in the late afternoon, the employee would be entitled to an uninterrupted 10-minute duty-free rest break during the morning work period and another one during the afternoon work period.

In order to be considered a split shift, there must be more than 60 minutes between the end of one work period and the start of the second work period. Anything 60 minutes or less between shifts is considered a meal period.

If the second work period is scheduled to start 60 minutes or less from the end of the first work period, the employee should select 'Meal Out' and then 'Meal In' upon their return. This is not a split shift, but rather a single shift with a long meal period. Therefore, meal periods and rest breaks are based on the employees' full shift, not the individual work periods.

#### **Q24. What are employees entitled to if they work 12-hour shifts?**

Employees who work 12-hour shifts are entitled to two (2) 30-minute meal periods and three (3) 10-minute duty-free rest breaks. The first meal period must start before the employee completes 5 hours of work (must start by 4 hours and 59 minutes into the shift). The second meal period must start before the employee completes 10 hours of work (must start by 9 hours and 59 minutes into the shift).

#### **Q25. I have employees scheduled for 10-hour shifts. To what are they entitled?**

Employees who work a 10-hour shift are entitled to one (1) 30-minute meal period and two (2) 10-minute rest breaks. The meal period must start before the employee completes 5 hours of work (must start by 4 hours and 59 minutes into the shift). If an employee works more than 10 hours on any workday, the employee is entitled to a second meal period. The second meal period must start before the employee completes 10 hours of work (must start by 9 hours and 59 minutes into the shift).

### **Premium Payments**

#### **Q26. When do I have to pay an employee an additional hour of pay (meal period or rest break premium payment)?**

You must pay a meal period premium payment for each day an eligible employee:

- Is not provided a full 30-minute uninterrupted, duty free meal period;
- Has not started her meal period before completing 5 hours of work (by 4 hours and 59 minutes into the shift);
- Is not provided a second meal period when the employee works more than 10 hours;
- Has not started his second meal period before completing 10 hours of work (by 9 hours and 59 minutes into the shift)

You must pay a rest break premium payment for each day one or more duty-free rest breaks are not made available to an eligible employee.

If an employee is not provided one or more required meal periods **and** one or more required duty-free rest breaks are not made available on the same workday, pay the employee two (2) additional hours of pay.

Use the meal period and rest break premium pay code.



**Q27. What are the consequences if I don't follow the California Meal Period and Rest Break Policy?**

A manager has the responsibility to comply with the policy and state law. Failure to do so creates great risk for Sodexo Live!. Claims for violations of California meal period and rest break laws can be very costly. Centralized data analysis and in-unit compliance reviews will be conducted to ensure compliance.

Managers not complying with the policy will be subject to constructive counseling up to and including termination of employment.

## Employee Relations

**Q.28. What do I do if an employee refuses to sign the Employee Acknowledgement on the Sodexo Live! California Meal Period and Rest Break Policy?**

If an employee refuses to sign the Employee Acknowledgement, simply sign and date the Employee Acknowledgement yourself to indicate the date you provided and reviewed the policy with the employee. Note the employee's refusal to sign and place it in the employee's personnel file. You should remind the employee, however, that failure to follow the California Meal Period and Rest Break Policy is grounds for constructive counseling, up to and including termination, and the employee's refusal to sign the Employee Acknowledgement does not excuse him or her from that obligation.

**Q29. What do I tell employees who have questions about past failures to provide the meal periods or rest breaks outlined in the California Meal Period and Rest Break Policy?**

If employees seek additional information about the reason for the Employee Acknowledgement or if they raise specific complaints about past practices, please tell them to contact Human Resources directly (if applicable) or the PeopleCenter and provide the employee with the contact information.

## Miscellaneous

**Q30. Does this state law and California policy apply to my Admin Assistant and Chef (Class Code 4 positions)?**

Yes. The California state law and Sodexo Live! policy for meal periods and rest breaks does apply to administrative assistants and chefs. It applies to all nonexempt (hourly paid) employees – not just the frontline employees paid through Kronos.

**Q31. I manage client employees. Do I post Sodexo Live!'s policy and have client employees sign the Employee Acknowledgement on the policy?**

No, you should not post a Sodexo Live! Policy or have client employees sign a Sodexo Live! employee acknowledgement. Consult with the client's Human Resources representative to discuss what resources are available to educate and keep the client's employees informed of California state requirements.

**Q32. I have employees who use electronic devices for their work. How do I ensure they are not interrupted during their meal periods and rest breaks?**

Employees should be instructed to turn off or silence their Company-issued pagers, radios, cell phones, etc., and to log out of any work assignment systems before the start of their meal periods and rest breaks. Refer to Sodexo's CP-217 Payment of Wages for All Hours Worked Policy for additional information.

**Q33. I supervise union employees. Do I implement this policy in my unit?**

You should check the collective bargaining agreement and see what it says about meal periods and rest breaks.

If the collective bargaining agreement is more generous than Sodexo Live!'s policy and California law, then follow the union contract. For example, some agreements may provide for 15-minute rest breaks, instead of the California minimum of 10-minute rest breaks.

If California law or Sodexo Live!'s policy is more generous than your union contract, follow the more generous requirements.

If the union contract does not have a provision covering meal periods or rest breaks, then you should follow Sodexo Live!'s policy. However, before applying Sodexo Live!'s policy or distributing the California Meal Period and Rest Break Policy and Acknowledgement Form to employees, you must consult with Human Resources.

Additionally, when applying Sodexo Live!'s policy, you do not want to act contrary to any other part of the union contract. For example, any discipline under Sodexo Live!'s California Meal Period and Rest Break Policy must be consistent with the disciplinary process provided in your union contract.

Please consult Human Resources for information specific to your location.

**Q34. Is there a reference guide to help remember how many meal periods and rest breaks an employee is entitled to?**

Yes. The California Meal Period and Rest Break Summary Charts in English and Spanish are available on the [Meal Period and Rest Break Policy - California](#) page of Sodexo LINK. This is a required posting. It should be posted near the time clocks and/or on employee bulletin boards. It identifies the required number of meal periods and rest breaks based on a range of work hours.

**Q35. Is there a poster on meal periods and rest breaks?**

No, there is no poster. However, the Sodexo Live! California Meal Period and Rest Break Policy and Acknowledgement Form, the Meal Period and Rest Break Summary Chart and applicable California Industrial Welfare Commission Wage Order(s) must be posted in an area accessible to employees (i.e., on the employee bulletin board or near the time clock). The combination of these documents provides a summary and details on meal period and rest break requirements.