

# It's Always Time for Lunch Somewhere, But Employees May Waive Their Meal Breaks If They Wish!

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There is a lot of confusion around the hyper-technical employment laws California's legislators seem to favor. Meal and rest breaks must be provided. They must be provided at certain times of the day, for a certain duration and without restriction. Interrupting a meal break before it is over is not allowed. Providing a meal instead of a duty-free meal *break* does not count. For example, the ubiquitous lunch-n-learn does not satisfy the obligation to provide a meal break just because a meal is served. Rather, because the activity is usually mandatory, and participation is expected of employees, it is an on-duty and not a duty-free meal period. If, on the other hand, the activity is truly voluntary and the employee elects to participate, then the employer's obligation is fulfilled.

Employers must start from the premise that, barring a collective bargaining agreement to the contrary, a California employee who works more than five hours in a day must be "provided" with at least a 30-minute uninterrupted meal break. A second meal period is again required if an employee works more than ten hours in a day. Under certain circumstances, one of those two meal breaks may be waived:

- ✓ The first meal period may be waived if the total number of hours an employee works in a day is exactly six or less.
- ✓ The second meal period may be waived if the total number of hours an employee works in a day is exactly twelve or less, but not if the first meal period was waived.
- ✓ The meal break waiver must be the result of mutual consent by both the employee and employer.
  - Employers cannot require or force a waiver on an employee.
  - Employers cannot retaliate against an employee who does not want a waiver.
  - Employees can withdraw their consent to a waiver if they want.

Sound complicated? It is.

Best practices require that a meal period waiver be documented in writing on a properly crafted form. Even more impressive best practices are when an employer actually has those forms re-affirmed annually.

While samples of meal period waiver agreements may be readily found on the internet, you may want to consider consulting with an employment law specialist to prepare one that is tailored for your company.