

BREAKS AND MEASURES OF REASONABLENESS

Employers may be able to prioritise ongoing production and service over breaks if proposed changes go ahead. Any changes signal welcome relief for many employers struggling to comply with existing break requirements. By introducing a more flexible approach fettered only by a test of reasonableness, the Government aims to improve breaks flexibility and support the underlying need for work life balance.

EXISTING BREAKS LEGISLATION

Existing breaks legislation requires employers to provide employees with breaks as follows:

- One paid 10 minute rest break where employees work between 2 and 4 hours;
- One paid 10 minute rest break and one unpaid 30 minute meal break where employees work between 4 and 6 hours; and
- Two paid 10 minute rest breaks and one unpaid 30 minute meal break where employees work between 6 and 8 hours.
- Where an employee works more than 8 hours, the requirements apply as if their work period had started again at the end of the eighth hour. Failing agreement, breaks must occur evenly throughout the work period.

Many workplaces have found the existing requirements difficult and inflexible. Continuity of service or production has been undermined in air traffic services and sole charge positions. Government introduced the Employment Relations (Rest Breaks and Meal Breaks) Amendment Bill (the "Bill") to provide urgent relief.

PROPOSED CHANGES

The Bill proposes to repeal existing requirements and replace them with a flexible approach. If passed, employees become entitled to rest and meal breaks that provide them with a reasonable opportunity, during the employee's work period, for rest, refreshment, and attending to personal matters as are appropriate for the employee's work period. Employers may restrict breaks where reasonable and necessary, having regard to the nature of the work. The restrictions must relate to the awareness of or partial performance of duties during their break, possible interruptions and/or the location of the break.

Breaks would be taken at times and for periods as agreed. If parties cannot agree after a reasonable period of time, the employer may specify the timing and duration of breaks. These specifications must meet the standard of reasonableness and good faith, having regard to the employer's operational environment, resources and interest in maintaining continuity of service or production.

Exceptions to the requirements include where parties agree that an employee be compensated for breaks instead. An employer may be exempt to the extent that it cannot reasonably provide breaks having regard to the nature of the work. In either case, compensatory measures must be provided and be comparable to breaks had they been taken. Compensatory measures include arrangements where an employee takes time off work at another time.

Similar to existing legislation, an employer would face a penalty up to a maximum of \$10,000 in respect of any failure to provide breaks and/or compensatory measures. The Bill fails to apply any workplaces bound by other legislation in respect of breaks such as truck drivers subject to Log Book Rule requirements. Parties may access mediation services and the Employment Relations Authority in the event of a dispute or abuse.

CHRISTMAS BREAK?

The Bill may pass into law before 30 December 2009 and be accompanied soon after by an approved code of practice that will highlight recommendations as to the length and frequency of breaks. Existing terms and conditions remain valid as long as breaks represent a reasonable opportunity for rest, refreshment and attending to personal matters as are appropriate for the work period. Please seek our advice to clarify whether your workplace has an agreement and practice that complies with existing legislation and proposed changes.

We designed this inform to provide clients with a resource for reference. This inform does not purport to be, nor should it be construed to be, specific professional advice in respect of any topic contained in the inform. Independent professional advice should be obtained before relying on any aspect of this inform.