



January 2017

Position statement - Paid rest breaks

A recent Court of Appeal decision* has provided guidance regarding the meaning of “paid rest breaks” set out in section 69ZD of the Employment Relations Act (the ERA) – rest breaks are to be paid at the same rate that an employee is ordinarily paid for their work.

The law requires an employer to provide an employee with rest and meal breaks that:

- provide a reasonable opportunity, during the employee’s work period, for rest, refreshment and attention to personal matters; and
- are appropriate for the duration of the employee’s work period.

The law also provides for an employer and employee to agree to reasonable compensation instead of breaks – for example if the employee is unable to or agrees not to take a break and works through, then the employee must be compensated. This compensation is “reasonable” if the employee gets the same amount of paid time off as they would otherwise have taken as a paid break, or is paid compensation for rest breaks not taken.

Calculating rest break payments:

- Employees should not be financially disadvantaged when rest breaks are taken.
- Employers should have no difficulty working out the value of rest breaks for employees who are paid a standard **hourly rate**.
- Employers must ensure that employees working on variable rates (such as **piece rates**) are paid for their breaks. A rate of pay for breaks can be calculated based on the rate of pay employees will have been receiving at the time of the break.
- Piece rates should not have the paid break built into them.

Employment records should, as appropriate, show:

- payments made for rest breaks
- compensation paid for rest breaks not taken
- time recorded for compensatory paid time off work.

Following recent amendments to the ERA which came into force on 1 April 2016, the Labour Inspectorate has increased powers to monitor and enforce compliance with employment standards, including the provision of paid rest breaks.

* *Lean Meats Oamaru Limited v NZ Meat Workers and Related Trade Unions Incorporated* [2016] NZCA 495