

THE STATE OF WEST VIRGINIA

EMPLOYEE MEAL BREAK REQUIREMENTS

West Virginia Division of Labor
Wage & Hour Section

Break Law - Fact Sheet 1

West Virginia Code Chapter 21, Article 3, Section 10(a)

(July 2016)

EMPLOYEE MEAL BREAK REQUIREMENTS

During the course of a workday of six or more hours all employers shall make available to employees at least twenty minutes for meal breaks at times reasonably designated by the employer. This provision shall be required in all situations where employees are not afforded necessary breaks and/or permitted to eat while working.

Who does it apply to? Employees working within the state of West Virginia that work six or more hours per day or shift.

What is the requirement? Employers are required to provide their employees that work six or more hours with the minimum of a twenty-minute meal/break period unless the employee is already being provided a lunch or break period or is allowed to eat while working. The break requirement remains at twenty-minutes regardless of the total number of hours the employee works in excess of the required six.

When? The break may be given at any time throughout the employee's work day at a time deemed reasonable by the employer.

How? The twenty-minute requirement doesn't have to be provided all together in one break period. It may be provided in smaller increments at the discretion of the employer.

EXCEPTIONS TO THE RULE

The requirement for a twenty-minute meal break does not apply under the following circumstances.

1. The employee is already being afforded a lunch and/or break period.
2. The employee is allowed necessary restroom breaks and is allowed to eat while working.

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DOES THE REQUIRED BREAK PERIOD HAVE TO BE PAID?

When considering whether a meal break or lunch period is to be paid or unpaid, the employer must consider the amount of time the employee is relieved from duty and the purpose for the break. Bona fide meal periods that typically last for a period of thirty-minutes or longer may be paid or unpaid as determined by the employer. However, any meal break or rest period that lasts twenty-minutes or less must be paid.

- Whenever an employer authorizes one or more employees a break or meal time of twenty (20) consecutive minutes or less during a work day, the employer shall treat the break time or meal time as compensable time. §42CSR 8-11.3(a)
- Whenever an employer authorizes one or more employee break times or meal times that typically last for thirty consecutive minutes or longer during a work day, the employer may treat the break or meal period as non-work time. §42CSR 8-11.3(b)
- “Break time” or “break period”, when authorized by an employer, means a rest period of short duration lasting up to twenty-minutes that must be counted as hours worked. §42CSR 5-3.3.
- Federal guidelines consider rest periods of short duration, usually twenty-minutes or less, to be counted as hours worked. Bona fide meal periods, which typically last thirty-minutes or more, generally need not be considered as work time.