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# Employment Law

## Changes to Rest Breaks and Meal Breaks Law, Again

Before the Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008 came into force on 1 April 2009, there were no statutory requirements for meal and rest breaks. Generally, employers and employees worked out their own systems for breaks or included break entitlements in collective agreements. The Act introduced statutory requirements for work breaks and required employers to provide appropriate facilities and breaks for employees who wished to breastfeed or express milk in the workplace.

Unfortunately, the changes were very prescriptive and compliance with the legislation was not practicable in all situations. In particular, the legislation resulted in regional airport control towers being closed down, to allow sole-charge Air Traffic Controllers to take breaks. A number of pharmacies, schools, meatworks and sole attendant operations were also reported to have raised concerns about the legislation.

In response to these concerns, Labour Minister Kate Wilkinson introduced the Employment Relations (Rest Breaks and Meal Breaks) Amendment Bill on 27 October 2009. The main change proposed by the Bill is the repeal of the prescriptive requirements for work breaks, after set periods of working time and removing the rules about the timing of breaks during a day.

Ms Wilkinson said the new amendment would provide "greater flexibility" and give employers and employees the opportunity to develop breaks at a time best suited to individual requirements.

The Bill has a requirement for breaks that provide a reasonable opportunity for rest, refreshment and attending to personal matters, but requires an employee's break to be "appropriate for the duration of the employee's work period" and taken either by agreement or at "reasonable times".

Under the Bill, if an employer and employee cannot agree on when the employee is to take their breaks or on the duration of the breaks, the employer may specify reasonable times and durations that, having regard to the employer's operational environment or resources and the employee's interests, enable the employer to maintain continuity of service or production. In doing so, the employer should take into account its operational environment or resources and the employee's interests.

Of particular interest to many employees and employers is the ability under the Bill to agree that the employee is to receive compensatory measures instead of rest and/or meal breaks. In addition, an employee and an employer can agree that an employer is not required to provide rest breaks and meal breaks to the extent that, due to the nature of the work performed by the employee, the employer cannot reasonably provide the employee with rest breaks and meal breaks.

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