



**cullings** is the newsletter of  
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## Further Regulation in the Workplace

The former Labour led Government's law regarding breaks and infant feeding comes into force from 1 April 2009.

The changes regulate areas that until now have been left to employers and employees to agree on. The changes regulate tea breaks and meal breaks; and infant feeding at work.

### Tea and meal breaks

From 1 April 2009 employers must now provide their employees with rest and meal breaks as follows:

- Where the employee's work period is between 2 and 4 hours – one 10 minute paid break;
- Where the employee's work period is between 4 hours and 6 hours – one 10 minute paid break, and one meal break of 30 minutes;
- Where the employee's work period is between 6 and 8 hours – two 10 minute paid breaks, and one meal break of 30 minutes.

As the 10 minute breaks are specified as paid, the silence in relation to payment for the meal break implies that it is unpaid.

In the absence of the employer and the employee being able to agree when the breaks should be taken, the employer must, so far as it is reasonable and practicable, provide the breaks evenly through the work period. This means in the case of an employee working 8 hours a day:

- A meal break in the middle of the work period; and
- A rest break half way through the work period either side of the meal break.

These breaks are now mandatory. The Employment Relations Authority can issue a compliance order to enforce the employer's obligation to provide the breaks. It may also make the employer pay a penalty (up to \$10,000 for a company).

There is also another possible risk to employers if they do not provide the paid breaks. Employers may now find if a disgruntled employee makes a personal grievance claim, that it is accompanied by a claim for untaken paid breaks (similar to a claim for holiday pay where this has accrued but has not been paid out on termination of employment).

### Infant feeding at work

From 1 April 2009 employers will be required to provide facilities and unpaid breaks for employees who

wish to breastfeed their infants during working hours.

The new law anticipates that these provisions will make it easier for nursing mothers to return to work. It is based on the fact that breastfeeding provides the best start for infants and is important for both infant and maternal health. Until now there has been no general obligation to provide facilities for women who wish to breastfeed at work. With the provision of facilities (and explicit support) for breastfeeding the new law will assist women who wish to make an early return to the work after having children.

Employers are required to provide appropriate facilities and breaks for employees who wish to breastfeed (including expressing breast milk), as far as is reasonable and practicable in the circumstances.

The provision of breaks is a matter for negotiation between the employer and employee, but is based on the following standards:

- The breaks are unpaid unless agreed otherwise;
- The breaks are to be provided in addition to the standard paid rest breaks and unpaid meal breaks, but the paid rest and meal breaks can be used as breastfeeding breaks if this is agreed to;
- The length and frequency of breaks is a matter for negotiation.

Appropriate facilities are likely to include a separate space with sufficient privacy for mothers to breastfeed (or express) away from the view of others without disrupting normal business operations. Further, if a mother is expressing she will require access to a fridge or some other facility to store the milk.

The Department of Labour are developing a Code of Practice to assist employers meet their obligations. It is anticipated that this will be available in July 2009.

Again, failure to comply may result in the Employment Relations Authority issuing a compliance order to enforce the employer's obligations. It may also make the employer pay a penalty (up to \$10,000 for a company).

**Cullen – The Employment Law Firm** is happy to assist employers with reviewing their arrangements to meet these new laws.

If your workplace has informal arrangements regarding breaks, it would be prudent to amend employment agreements to ensure that breaks are specifically provided for.