

Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008

Guidelines for the Early Childhood Education Sector

NZEI Te Riu Roa and the Ministry of Education have been in discussion over the impact on early childhood centres (including kindergartens) of an amendment to the Employment Relations Act that introduced a statutory entitlement to rest breaks. It is anticipated that many centres have already prepared for the introduction of this legislation on 1 April, and that they will have worked / be working with their staff to find practical and common sense solutions to any issues that arise.

To assist any centres that are having difficulties, NZEI and the Ministry have agreed that the Ministry should issue a circular outlining some broad guidance on the issue.

An amendment to the Employment Relations Act (ERA) was passed in September 2008 and introduces a statutory requirement for employers to provide all employees with paid rest breaks and unpaid meal breaks. The amendment also requires employers (where applicable) to provide infant feeding facilities and unpaid breaks for staff who are breastfeeding. The amendment comes in to force on 1 April 2009.

The minimum entitlement to rest and meal breaks is:

One 10-minute paid rest break if the work period is between two and four hours;
One 10-minute paid rest break and one unpaid 30-minute meal break if the work period is from four to six hours;
Two 10-minute paid rest breaks and one 30-minute unpaid meal break if the work period is from six to eight hours.

If the work periods exceed eight hours – these provisions automatically re-apply to each succeeding work period.

A number of questions have been raised about how the changes affect our sector.

NZEI and the Ministry have agreed:

1. that all staff are entitled to the rest and meal breaks provided for in the amendment to the Employment Relations Act;
2. that these breaks can be taken from any type of work, including teaching and non-teaching time or duties;
3. that these breaks should be genuine breaks;
4. that centres should encourage staff to take breaks; and endeavour to structure work duties and timetables to facilitate opportunities for them to do so;
5. that there is no default precise timing if agreement is not reached although an employer must, so far as reasonable and practicable, provide the employee with evenly distributed breaks, and that the timing of breaks is permitted to be affected by what is reasonable and practicable;
6. that while considerable flexibility and pragmatism may be needed about when breaks are taken, the taking of the breaks must not result in child:teacher ratios that exceed the regulations;

7. it should not be assumed that support staff can 'cover' for teachers taking breaks unless that is agreed to with the support staff employee;
8. that centres might choose to reorganise timetables;
9. that breaks as required by the Employment Relations Act do not always have to be scheduled but can be agreed to be taken informally.

All parties urge employers and all employees to discuss the issues and impacts arising from this legislative change. The issues may be different for teaching and non-teaching staff. The diversity of workplaces in the early childhood education sector means that we expect that many different options will be taken and that the options may be reviewed from time to time as circumstances change.

NZEI and the Ministry acknowledge that the application of this legislation in the early childhood education sector may be challenging and that the impact of solutions should be carefully thought through.

Centres can contact their usual employment adviser for further information. Staff should discuss any issues with their association management / supervisor, or they can contact NZEI for further advice.

Further information of rest breaks and infant feeding can also be found on the Department of Labour's Website – www.ers.govt.nz. The legislation can be found at <http://www.legislation.govt.nz/>.