

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

Guidelines for the Compulsory Education Sector

A number of sector groups (NZSTA, PPTA, NZEI, SPANZ, NZSPC, and the NZPF) met recently with the Ministry of Education to discuss the impact of an amendment to the Employment Relations Act that introduced a statutory entitlement to rest breaks. It was agreed by all attendees that many schools have already prepared for the introduction of this legislation on 1 April, and that in the main, schools and staff have found practical and common sense solutions to any issues that arise.

To assist any schools that are having difficulties, the sector groups asked the Ministry to 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 breastfeeding infants. The amendment comes in to force on 1 April 2009.

The legislation provides a flexible framework for employers and employees to discuss, in good faith, rest breaks and infant feeding facilities and breaks.

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.

Most schools have already implemented policies that allow for this new legislation, however, a number of questions have been raised by schools about how the changes affect our sector. Following discussion, the Ministry, NZSTA, NZEI, SPANZ, and the NZPF reached consensus on the following principles:

1. that all school 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 - schools should recognise that scheduled intervals will not necessarily always constitute breaks for all staff;
4. that schools 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 considerable flexibility and pragmatism may be needed about when breaks are taken especially in small schools;
7. it should not be assumed that support staff can 'cover' for teachers taking breaks unless that is specifically agreed to with the support staff employee;
8. that schools might choose to reorganise timetables, including introducing an afternoon interval, to enable staff to take the breaks to which they are entitled, but that they are not required to do so; and
9. that breaks as required by the Employment Relations Act do not always have to be scheduled but can be agreed to be taken at the employees discretion.

The Ministry is also of the view that a rest break can be taken at any time a staff member is at work. The collective agreements do not define what 'work time' is, but the secondary and area school teachers' collective agreements define teaching time in the hours of work section as including supervision, non-scheduled supervision time of students, teacher non-contact time, administrative duties or other directed or non-directed duties.

All parties urge employers and all employees to discuss the issues arising from this legislative change. The issues may be different for teaching and non-teaching staff. The diversity of workplaces in the compulsory schooling sector means that we expect that many different options will be taken by schools. It is likely to be especially challenging in small schools.

Schools can contact the New Zealand School Trustees Association, or their usual employment adviser for further information. Staff should discuss any issues with their principal, or they can contact their union for further advice.

Further information on 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/>.