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|  | In California, the [Industrial Welfare Commission Wage Orders](http://www.dir.ca.gov/dlse/Glossary.asp?Button1=I#Industrial%20Welfare%20Commission%20Wage%20Orders) require that employers must authorize and permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four hour work period, or major fraction thereof. ." A rest period is not required for employees whose total daily work time is less than three and one-half hours.The Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a "major fraction" of four The rest period is counted as time worked and therefore, the employer must pay for such periods. Since employees are paid for their rest periods, they can be required to remain on the employer's premises during such periods. Pursuant to Labor [Code Section 1030](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1030-1033) every employer, including the state and any political subdivision, must provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee**.** If an employer fails to provide an employee a rest period in accordance with an applicable [IWC Order](http://www.dir.ca.gov/dlse/Glossary.asp?Button1=I#IWC%20Order), the employer shall pay the employee one additional hour of pay at the employee's [regular rate of pay](http://www.dir.ca.gov/dlse/Glossary.asp?Button1=R#regular%20rate%20of%20pay) for each workday that the rest period is not provided. [Labor Code Section 226.7](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=00001-01000&file=200-243) Thus, if an employer does not provide all of the rest periods required in a workday, the employee is entitled to one additional hour of pay for that workday, **not one additional hour of pay for each rest period** that was not provided during that workday.The rest period is defined as a "net" ten minutes, which means that the rest period begins when the employee reaches an area away from the work area that is appropriate for rest. **Employers are required to provide suitable resting facilities that shall be available for employees during working hours in an area separate from the toilet rooms.** |

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| **1.** | **Q.** | **What are the basic requirements for rest periods under California law?** |
|  | **A.** | Employers of California employees covered by the rest period provisions of the [Industrial Welfare Commission Wage Orders](http://www.dir.ca.gov/dlse/Glossary.asp?Button1=I#Industrial%20Welfare%20Commission%20Wage%20Orders) must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. Insofar as is practicable, the rest period should be in the middle of the work period. If an employer does not authorize or permit a rest period, the employer shall pay the employee one hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided. |
| **2.** | **Q.** | **Must the rest periods always be in the middle of each four-hour work period?** |
|  | **A.** | Rest breaks must be given as close to the middle of the four-hour work period as is practicable. If the nature or circumstances of the work prevent the employer from giving the break at the preferred time, the employee must still receive the required break, but may take it at another point in the work period. |
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| **4.** | **Q.** | **Is it permissible if I choose to work through both of my rest periods so that I can leave my job 20 minutes early?** |
|  | **A.** | No, working through your rest period does not entitle you to leave work early or arrive late. |
| **5.** | **Q.** | **Can my employer require that I stay on the work premises during my rest period?** |
|  | **A.** | Yes, your employer can require that you stay on the premises during your rest break. Since you are being compensated for the time during your rest period, your employer can require that you remain on its premises. And under most situations, the employer is required to provide suitable resting facilities that shall be available for employees during working hours in an area separate from the toilet rooms. |
| **6.** | **Q.** | **Can I have additional rest breaks if I am a smoker?** |
|  | **A.** | No, under California law rest period time is based on the total hours worked daily, and only one ten-minute rest period need be authorized for every four hours of work or major fraction thereof. |
| **7.** | **Q.** | **When I need to use the toilet facilities during my work period does that count as my ten minute rest break?** |
|  | **A.** | No, the 10-minute rest period is not designed to be exclusively for use of toilet facilities as evidenced by the fact that the Industrial Welfare Commission requires suitable resting facilities be in an area "separate from toilet rooms." The intent of the Industrial Welfare Commission regarding rest periods is clear: **the rest period is not to be confused with or limited to breaks taken by employees to use toilet facilities**. **Allowing employees to use toilet facilities during working hours does not meet the employer's obligation to provide rest periods as required by the IWC Orders.** This is not to say, of course, that employers do not have the right to reasonably limit the amount of time an employee may be absent from his or her work station; and, it does not indicate that **an employee who chooses to use the toilet facilities while on an authorized break may extend the break time by doing so.** DLSE policy simply prohibits an employer from requiring that employees count any separate use of toilet facilities as a rest period. |