



FACT SHEET

Meal Breaks under the HIGA

Updated: July 2016
Replaces: December 2014

The information contained in this Fact Sheet applies to employers with employees employed in accordance with the *Hospitality Industry (General) Award 2010* (the 'HIGA') only.

BACKGROUND

On 15 August 2013, the Fair Work Commission handed down a decision to amend the HIGA as part of the two year review of modern awards. That determination varied the breaks clause to clarify the obligations of both employers and employees and allow for greater flexibility in the provision of breaks.

The most significant change is that for an employee rostered for more than five hours and up to six hours, there is no automatic entitlement to a break. The entitlement is contingent upon the employee making a written request to the employer (which may not be unreasonably refused by the employer). For shifts of more than six hours, break entitlements remain substantially the same.

The clause as it currently appears in the HIGA is as follows:

31.1 Breaks

An employee (including a casual employee) who is required to work a shift of more than five hours and up to six hours may elect to take an unpaid meal break of up to 30 minutes during the shift and the employer shall not unreasonably refuse the request.

31.2 Longer shifts

- (a) *If the employee is required to work a shift of more than six hours and up to eight hours, the employee is entitled to an unpaid meal break of no less than 30 minutes. The unpaid break may be taken no earlier than two hours after starting work and no later than six hours of starting work. If the employee is required to work a shift of more than eight hours and up to 10 hours, the employee is entitled to an unpaid break of no less than 30 minutes and an additional 20 minute paid break (which may be taken as two 10 minute paid breaks). The unpaid break may be taken no earlier than 2 hours after starting work and no later than six hours after starting work. Breaks should be spread evenly across the shift.*
- (b) *If the employee is required to work a shift exceeding 10 hours, the employee is entitled to an unpaid break of no less than 30 minutes and two 20 minute paid breaks. The unpaid break may be taken no earlier than two hours after starting work and no later than 6 hours after starting work. Breaks should be spread evenly across the shift.*

31.3 Request for unpaid meal break

- (a) *Where an employee elects to take an unpaid break, the request must be made in writing no later than at the commencement of a shift and the employer shall not unreasonably refuse the request.*
- (b) *The written request will apply to all shifts undertaken by the employee of more than five hours, unless otherwise agreed between the employee and employer. This arrangement may be reviewed at any time.*

31.4 Break not given

For a shift of more than six hours, if the employer does not release an employee for an unpaid meal break the employee shall be paid at the rate of 50% of the ordinary hourly rate extra for each hour or part of an hour from six hours after the employee started work until the employer gives the employee the unpaid meal break, or until the shift ends.

31.5 Entitlement to additional breaks

- (a) If the employer requires an employee to work more than five continuous hours after an unpaid break, the employer must give the employee an additional 20 minute paid break.*
- (b) If the employer requires an employee to work more than two hours' overtime after the employee completes his or her rostered hours, the employer must give the employee an additional 20 minute paid break.*

COMMENCING FROM THE FIRST FULL PAY PERIOD ON OR AFTER 15 AUGUST 2013

The QHA's quick guide to the new clause is below.

The most frequently asked questions on the meal breaks provisions are presented within this Fact Sheet as they provide practical guidance on the operation of HIGA clause 31.

ADDITIONAL BREAKS

Where an employee is required to work more than five continuous hours after an unpaid break has been taken, the employee will be entitled to an additional 20 minute paid break (refer to clause 31.5(a) of the HIGA).

Furthermore, where an employee is required to work more than two hours' overtime after the employee completes their rostered hours, the employee is entitled to an additional 20 minute paid break (refer to clause 31.5(b) of the HIGA).

MEAL BREAK PENALTIES

If an employee is not provided with an unpaid break of no less than 30 minutes where their shift is more than 6 hours in length, the employee is entitled to be paid an additional 50% of their ordinary hourly rate* for each hour or part of an hour from the sixth hour until the employer gives the employee the unpaid meal break, or until the shift ends (refer to clause 31.4 of the HIGA).

** Ordinary hourly rate is defined as the employee's applicable minimum hourly rate in clause 20.1.*

WORK HEALTH AND SAFETY CONSIDERATIONS

Despite an employee not having an entitlement to a break under the HIGA where they work a shift of more than 5 hours and up to 6 hours, an employer still has an obligation to provide a safe working environment under work health and safety legislation.

PROVISION OF MEALS

There is no requirement in the HIGA to provide employees with meals, except for circumstances where a full-time or part-time employee is required to work overtime for more than two hours without being notified on the previous day or earlier that they will be so required to work.

In those circumstances, the employee must either be supplied with a meal by the employer or be paid an allowance in accordance with clause 21.1(a) of the HIGA.

FREQUENTLY ASKED QUESTIONS

1. Does an employee have to put a request in writing for a 30 minute unpaid meal break in all instances?

No. Clause 31.3 only requires an employee to put a request in writing for an unpaid meal break of up to 30 minutes where their shift is more than 5 hours and up to 6 hours, and they elect to have an unpaid meal break during such shift.

For all other shifts of more than 6 hours, the employee must receive an unpaid break of (no less than) 30 minutes.

2. Where an employee qualifies for an unpaid break of (no less than) 30 minutes, can the employee request a longer unpaid break?

While it is not expressly stated in the HIGA, there is nothing preventing an employee requesting a longer unpaid break than that prescribed. It is up to the employer to decide whether or not to grant the request – if you do, ensure it is documented in the roster and timesheet (at the very least).

3. Where an employee qualifies for an unpaid break of (no less than) 30 minutes, can an employer direct the employee to take a longer unpaid break e.g. 45 minutes or 1 hour?

The HIGA states that an unpaid break should be “...no less than 30 minutes” (emphasis added), therefore the employer can schedule a break of 45 minutes or 1 hour.

4. Under what circumstances can an employer refuse an employee’s request to take an unpaid meal break when their shift is more than 5 hours and up to 6 hours?

An employer cannot unreasonably refuse a request for an unpaid meal break where the employee works a shift of more than 5 hours and up to 6 hours (refer to clauses 31.1 and 31.3(a)). As the HIGA does not provide any guidance as to what would be considered reasonable or unreasonable grounds the QHA suggests that employers focus on the genuine operational requirements of the business and the employee’s reason(s) for making the request when deciding whether to grant or deny the request.

5. If an employee works a shift of more than 5 hours and up to 6 hours and they request in writing to take an unpaid break, does the request apply only to that shift or to all shifts thereafter? Can the employee submit a request that applies to one shift only?

Once an unpaid break is requested and agreed to by the employer, the request will continue to apply until such time when the employee and employer agree otherwise (refer to clause 31.3).

If an employee wants their request to apply to one shift only, QHA recommends that the employee clearly state in their request the specific shift or shifts to which their request applies, and that the request does not apply to other shifts.

6. If an employee works a shift of more than 5 hours and up to 6 hours and they request in writing to take an unpaid break, do they have to request a 30 minute break or can they request a shorter unpaid break?

An employee may request a shorter unpaid break such as 10 or 15 minutes. Clause 31.1 of HIGA states that an employee may elect to take an unpaid meal break of up to 30 minutes during the shift and the employer shall not unreasonably refuse the request.

7. An employee works from 9am to 5.30pm on Friday. Is the employee entitled to an additional paid 20 minute break or just a 30 minute unpaid meal break?

Although the stated shift spans 8.5 hours, the employee will only be performing work for 8 hours of that time given that the employee will be taking a 30 minute unpaid break at some stage during their shift. Therefore, in this example, clause 31.2(a) will apply and the employee will not be entitled to any paid breaks during the shift.

This interpretation applies on the basis that the standard wording used throughout the meal breaks clause is *“If the employee is required to work a shift of... (emphasis added)”*. During an unpaid break, an employee does not perform work therefore time spent on an unpaid break does not come into consideration when determining whether an employee is entitled to a paid break or not.

8. An employee works 10 hours on Monday. She has requested an unpaid break additional to what is provided in the HIGA under clause 31.2(c). Am I able to provide this to the employee if we come to an agreement, or will it breach the Award provisions?

There is nothing preventing an employee from requesting to take unpaid breaks additional to what is provided for in the HIGA, however it is up to the employer to determine whether they can accommodate the employee's request. In these situations it is important that the employer makes an assessment based on the operational requirements of the business and does not unreasonably refuse the request.

9. Is an employee able to take a 30 minute unpaid break, where entitled, in two x 15 minute breaks?

The intention of the meal break clause is for the 30 minute unpaid meal break to be taken in one continuous period.

If an employer and/or employee are seeking for the 30 minute unpaid meal break to be taken in two 15 minute breaks, an Individual Flexibility Agreement ('IFA') would need to be entered into with the employee to vary the respective meal break clause within the HIGA.

Refer: QHA's Individual Flexibility Arrangements Fact Sheet

10. Prior to these amendments I entered into IFAs with individual employees to vary the meal break provisions. How do the amendments of August 2013 affect existing IFAs at my workplace?

A case by case assessment would need to be made of the IFA. It may be that the HIGA variations do not negate the need for an IFA, or they may be better than the IFA provisions.

Further Assistance

Financial QHA members are encouraged to contact the QHA's Employment Relations Department (refer the contact details at the bottom of this page) for a confidential discussion about the information in this Fact Sheet, or to discuss any queries relating to specific workplace matters.

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