

# Meal Breaks under the HIGA

## Contents

Meal and Rest Breaks .....	2
Elective meal breaks.....	2
Penalty for breaks not allowed.....	2
Additional breaks.....	3
Provision of meals .....	3
Breaks and Split Shifts .....	3
Work Health and Safety considerations.....	4
Frequently Asked Questions.....	5
ATTACHMENT 1 – Clause 16 Breaks .....	7

## Meal and Rest Breaks

The HIGA contains a table summarising break entitlements at clause 16.2 (below):

Hours worked per shift	Breaks
More than 5 hours and up to 6	Elective unpaid meal break of up to 30 minutes in accordance with clause <a href="#">16.4—Request for unpaid meal break</a> .
More than 6 hours and up to 8	An unpaid meal break of no less than 30 minutes (to be taken after the first 2 hours of work and within the first 6 hours of work).
More than 8 hours and up to 10	An unpaid meal break of no less than 30 minutes (to be taken after the first 2 hours of work and within the first 6 hours of work). One 20-minute paid rest break (may be taken as two 10-minute paid rest breaks).
More than 10 hours	An unpaid meal break of no less than 30 minutes (to be taken after the first 2 hours of work and within the first 6 hours of work). Two 20-minute paid rest breaks.

### Elective meal breaks

An employee rostered for more than five hours and up to six hours may request an elective unpaid meal break under clause 16.4. The employee does not have an automatic entitlement to a break, however they can request it. The employee must make a written request to the employer no later than the start of their shift which cannot be unreasonably refused.

### Penalty for breaks not allowed

Clauses 16.5 and 16.6 of the HIGA provide for a break not taken penalty if an employee is rostered to work more than 6 hours but the employer does not allow them to take their unpaid meal break.

The employee must be paid an additional 50% of their ordinary hourly rate (per clause 18.1) for all time after 6 hours from the start of their shift until either they are given the break or their shift ends.

**NOTE:** Ordinary hourly rate is defined as the employee’s applicable minimum hourly rate in clause 18.1.

Clause 16.5 provides the following example to demonstrate the application of the penalty:

#### Example

Mary is a full-time employee whose ordinary hourly rate is \$20.00 an hour. She is working an 8-hour shift. She is (therefore) entitled to an unpaid meal break of no less than 30 minutes. If she has been working for 6 hours and has not been allowed a break, then she becomes entitled to be paid the higher rate under clauses 16.5 and 16.6.

1. If the shift is a normal mid-week shift for which Mary is paid her ordinary hourly rate of \$20.00, then from when she has worked 6 hours until she is allowed to take a break or her shift ends, the employer is to pay her \$30.00 per hour (Mary’s ordinary hourly rate of \$20.00 plus 50% of her ordinary hourly rate, which is \$10.00).

2. If the shift is a Sunday shift for which Mary is paid 150% of her ordinary hourly rate of \$20.00, then from when she has worked 6 hours until she is allowed to take a break or her shift ends, the employer is to pay her \$40.00 per hour (Mary's Sunday shift rate of \$30.00 (being 150% of her ordinary hourly rate of \$20.00) plus 50% of her ordinary hourly rate, which is \$10.00).

Where an employee is permitted to take an unpaid meal break but makes the choice not to take it, this penalty will not apply.

### **Additional breaks**

Clause 16.7 of the HIGA requires the employer to give the employee an additional 20 minute paid rest break if the employee is required to work more than:

- 5 continuous hours after an unpaid meal break; or
- 2 hours of overtime after the employee's rostered hours have finished.

The overtime worked does not compound on the break entitlements under clause 16.2.

#### **Example**

An employee who works a 7 hour shift, followed by 3 hours of overtime will be entitled to:

- An unpaid meal break of no less than 30 minutes under clause 16.2; and
- An additional 20 minute paid rest break under clause 16.7(b).

### **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 26.4 of the HIGA.

### **Breaks and Split Shifts**

If an employee works a split shift, the breaks provisions apply to each period of work independently as they are treated as 2 separate shifts.

A split shift allowance may apply for part-time and full-time employees who work a split shift. Employers should refer to clause 26.14 of the HIGA for the appropriate allowance amount in relation to the length of the break between shifts.

A casual employee can work a split shift. Each period of work is treated as a separate shift. The QHA's view is that the time off between shifts must be at least 2 hours for it to be a split shift. If the employee's break is rostered as a 'meal break', 'lunch break' or similar then this would indicate it is intended to be one shift with a meal break. The split shift allowance from clause 26.14 does not apply to a casual employee.

## **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.

Where an employee is permitted to take a break but chooses not to take it, employers should still be mindful of their work health and safety obligations. Employees who refuse to take breaks may be at higher risk of fatigue or being overworked. The QHA recommends employers enforce breaks by reminding or directing employees to take their allocated breaks. If an employee refuses to comply with a direction, the employer may consider disciplinary action.

## FREQUENTLY ASKED QUESTIONS

### **Q: Does an employee have to put a request in writing for a 30-minute unpaid meal break in all instances?**

No. Clause 16.4 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.

### **Q: 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 to grant the request. If you do, ensure it is documented in the roster and timesheet (at the very least).

### **Q: 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.

### **Q: 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 clause 16.4(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.

### **Q: 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 16.4(b)).

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.

### **Q: 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 16.2 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.

### **Q: 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, 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.

**Q: An employee works 10 hours on Monday. She has requested an unpaid break additional to what is provided in the HIGA. 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.

**Q: 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 with the employee to vary the respective meal break clause within the HIGA.

## ATTACHMENT 1 - Clause 16 Breaks

### 16. Breaks

**16.1** Clause 16 deals with meal breaks and rest breaks and gives an employee an entitlement to them in specified circumstances.

#### 16.2 Frequency of breaks

An employee who works the number of hours in any one shift specified in column 1 of **Table 2—Entitlements to meal and rest break(s)** is entitled to a break or breaks as specified in column 2.

**Table 2—Entitlements to meal and rest break(s)**

<b>Column 1 Hours worked per shift</b>	<b>Column 2 Breaks</b>
More than 5 hours and up to 6	Elective unpaid meal break of up to 30 minutes in accordance with clause <u>16.4—Request for unpaid meal break</u> .
More than 6 hours and up to 8	An unpaid meal break of no less than 30 minutes (to be taken after the first 2 hours of work and within the first 6 hours of work).
More than 8 hours and up to 10	An unpaid meal break of no less than 30 minutes (to be taken after the first 2 hours of work and within the first 6 hours of work). One 20 minute paid rest break (may be taken as two 10 minute paid rest breaks).
More than 10 hours	An unpaid meal break of no less than 30 minutes (to be taken after the first 2 hours of work and within the first 6 hours of work). Two 20 minute paid rest breaks.

**16.3** When the employer rosters an employee’s breaks, they must make all reasonable efforts to ensure that breaks are spread evenly across the employee’s shift.

#### 16.4 Request for unpaid meal break

**(a)** An employee working a shift of more than 5 and up to 6 hours who elects to take an unpaid meal break must request the break in writing no later than the start of their shift. The employer must not unreasonably refuse the employee’s request.

**(b)** A request under clause 16.4(a) applies to all shifts of more than 5 hours worked by that employee unless otherwise agreed between the employee and the employer.

**(c)** The arrangement may be reviewed at any time.

#### 16.5 Employer to pay higher rate if break not allowed

If, during an employee’s shift of more than 6 hours, the employer does not allow the employee to take an unpaid meal break, then the employer must pay the employee at the rate that applies under clause 16.6:

**(a)** from 6 hours after the employee started work on that shift;

**(b)** until either the employee is given a break or the shift ends.

**16.6** If an employee is not allowed to take an unpaid meal break in accordance with clause 16.2 during a shift of more than 6 hours, the employer must pay the employee **50%** of the employee’s ordinary hourly rate extra from the end of 6 hours after starting work until either the employee is allowed to take the break or the shift ends.

### 16.7 Additional rest break

An employer must give an employee an additional paid rest break of 20 minutes if the employer requires the employee to work more than:

- (a) 5 continuous hours after an unpaid meal break; or
- (b) 2 hours' overtime after the employee finishes their rostered hours.

NOTE: For the purposes of clause 16.7(b) the overtime worked does not compound on the break entitlements under clause 16.2.

EXAMPLE: An employee who works a 7 hour shift, followed by 3 hours of overtime will be entitled to breaks as follows:

- (a) for the 7 hour shift, an unpaid meal break of no less than 30 minutes under clause 16.2; and
- (b) for the 3 hours of overtime, an additional 20 minute paid rest break under clause 16.7(b).

---

*The information contained in this document is intended for general information only. It does not constitute professional advice. The issues with which it deals may be complex and the document necessarily deals only with general principles. Whilst due care has been taken in preparing this document, no responsibility is accepted by the author for the accuracy of the information therein contained or for any consequences arising from reliance on this document. Financial QHA members are encouraged to seek the appropriate advice from the QHA's Employment Relations Department on their circumstances or to discuss any queries relating to specific workplace matters.*

© Queensland Hotels Association, January 2023