

## CURRENT LANGUAGE

### 12. What are intermittent rest periods?

Employees need not be given a full 10-minute rest period when the nature of the work allows intermittent rest periods equal to ten minutes during each four hours of work. Employees must be permitted to start intermittent rest breaks not later than the end of the third hour of their shift.

An “intermittent rest period” is defined as intervals of short duration in which employees are allowed to relax and rest, or for brief personal inactivities from work or exertion. A series of ten one-minute breaks is not sufficient to meet the intermittent rest break requirement. The nature of the work on a production line when employees are engaged in continuous activities, for example, does not allow for intermittent rest periods. In this circumstance, employees must be given a full ten-minute rest period.

DRAFT PROPOSED LANGUAGE (Updated 12/20/2016)

### 12. What are intermittent rest periods?

An “intermittent rest period” is defined as an interval of short duration in which employees are allowed to rest, relax, and engage in brief personal activities ~~apart while relieved of from their all~~ work duties. ~~Every circumstance must be evaluated on a case by case basis.~~

Employers have an obligation to provide employees with breaks. Employers must affirmatively promote meaningful break time to ensure employees receive complete relief from work duties. Employees need not be given an uninterrupted full 10-minute rest period when the nature of the work allows intermittent rest periods equal to ten minutes during each four hours of work. Employees must be permitted to start intermittent rest periods no later than the end of the third hour of their shift.

The Court of Appeals ~~has concluded~~ recognized that when the nature of work requires employees to engage in constant mental or physical exertion, intermittent rest periods are not permitted. Pellino v. Brink's, 164 Wn. App. 668, 696, 267 P.3d 383 (2011). An example of constant mental exertion that does not permit an intermittent rest period is where the nature of the work requires employees to engage in constant mental vigilance to protect life or property, such as service on an armored truck. An example of constant physical exertion that does not permit an intermittent rest break is where the nature of the work requires continuous physical work activities, such as work on a production line. Employees must be given an uninterrupted full ten 10-minute rest period under these examples or other circumstances where the nature of the work requires constant mental or physical exertion. ~~On the other hand, if the nature of work has regular patterns of ebb and flow of mental and/or physical exertion, then intermittent rest periods are permitted.~~

Even if an employee engages in brief personal activities, not all short breaks qualify as intermittent rest periods. A series of ten one-minute breaks is not sufficient to meet the intermittent rest period requirement. The Court of Appeals has also recognized that, in some circumstances (e.g. when

employees are required to maintain constant vigilance), brief stops to run to the restroom or to grab food or drink to consume ~~while an employee performs his or her job~~ are too short and hurried to be considered intermittent rest periods because if these stops do not provide a true break from work activity and an opportunity for relaxation. *Pellino v. Brink's*, 164 Wn. App. 668, 696, 267 P.3d 383 (2011).

*Note:* The Division of Occupational Safety and Health's [Directive 5.98](#) states that employers must provide reasonable access to bathrooms and toilet facilities under the regulations promulgated under the Washington Industrial Safety and Health Act. In most work settings this means that the employer may not impose unreasonable restrictions on accessing bathrooms or toilet facilities, including time use restrictions.