



ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

**TITLE: AGRICULTURAL LABOR
STANDARDS — MEAL PERIODS,
REST PERIODS, AND RATES OF PAY**

NUMBER: ES.C.6.2

**CHAPTER: [RCW 49.30](#)
[WAC 296-131-020](#)**

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Agricultural employees have the right to meal and rest periods.

The agricultural meal period regulation, [WAC 296-131-020\(1\)](#), requires employers to provide 30-minute meal periods to employees who work more than five consecutive hours. Employees who work eleven or more consecutive hours must receive a second 30-minute meal period.

The agricultural rest period regulation, [WAC 296-131-020\(2\)](#), requires employers to provide employees a 10-minute rest period in each 4-hour period of work and to pay employees for rest periods. The term “rest period” means to stop work duties, exertions, or activities for personal rest and relaxation.

The Washington State Supreme Court confirmed employers' obligations to pay agricultural piece-rate employees separate compensation for their rest periods in *Lopez Demetrio v. Sakuma Brothers Farms Inc.*, 183 Wn.2d 649, 355 P.3d 258 (2015). The Washington State Supreme Court has also confirmed that the Minimum Wage Act (MWA), [RCW 49.46](#), requires employers to pay agricultural piece-rate employees a separate hourly rate for time spent performing non-piece-rate work. *Carranza v. Dovex Fruit Company*, 190 Wn.2d 612, 416 P.3d 1205 (2018). This work, and its associated pay rate, are commonly referred to as “piece-rate down time” or “nonproductive time.” The piece-rate work and associated pay rate is referred to as “piece-rate active time” or “productive time.” The rate of pay an employee receives for rest periods is dependent on their regular rate of pay, which includes piece-rate active time and piece-rate down time, not including rest periods. See **Section 11** for more guidance on calculating the regular rate of pay.

Meal Periods

1. When is a meal period required?

Meal period requirements are as follows:

- Employees working five or more hours must be allowed a meal period;
- Employees cannot work more than five hours without being allowed an uninterrupted meal period;
 - For example, if an employee begins working at 6:00 AM, the meal period must begin no later than 11:00 AM.
- Employees who work eleven or more hours must be allowed a second 30-minute meal period;
 - For example, if an employee works from 6:00 AM-6:00 PM, and receives their first meal period between 11:00-11:30 AM, their second meal period must begin no later than 4:30 PM.

If an employee wishes to waive their meal period, the employer may agree to it. The employee may at any time request the meal period. While it is not required, the department recommends obtaining a written request from each employee who chooses to waive their meal period. The request should also be written in the employee's native language. If, at some later date, the employee wishes to receive a meal period, any agreement would no longer be in effect.

2. What are the pay requirements for meal periods?

Meal periods are not considered hours of work and may be unpaid as long as employees are completely relieved from their duties and receive 30 minutes of uninterrupted mealtime.

Rest Periods

3. What is a rest period?

The term "rest period" means to stop work duties, exertions, or activities for personal rest and relaxation. Rest periods are paid and are considered hours worked. Employees must be given a full uninterrupted 10-minute rest period in each four-hour period of work "on the employer's time." The term "on the employer's time" means that the employer is responsible for paying the employee for the time spent on a rest period. Employees may not waive rest periods and employers are required to ensure employees receive their rest periods.

4. When is a rest period required?

Employees must be given a full 10-minute rest period in each 4-hour period of work. [WAC 296-131-020\(2\)](#) does not state at what time the rest period must be scheduled, however, employees cannot work more than four hours without receiving a rest period.

- For example, if an employee begins working at 6:00 AM, the rest period must begin no later than 10:00 AM.

5. When does the clock start for the rest period?

The clock starts once the employee is fully relieved of duties. Employers may require employees to remain on the premises during their rest periods.

6. How must employers compensate agricultural piece-rate employees for paid rest periods?

Agricultural employers who pay their employees by piece-rate must also pay them separate compensation for their rest periods. Employers cannot count piece-rate earnings toward the required rest period compensation. The separate payment must be based on either the regular rate of pay or minimum wage, whichever is greater. *Lopez Demetrio v. Sakuma Brothers Farms Inc.*, 183 Wn.2d 649, 355 P.3d 258 (2015).

Piece-Rate Active Time and Piece-Rate Down Time

7. What is the difference between “piece-rate active time” and “piece-rate down time?”

“Piece-rate active time” is characterized by duties that directly relate to earning the piece-rate pay. Piece-rate active time is compensated based on the employee’s productivity. An agricultural piece-rate employee must receive no less than the minimum wage per hour for piece-rate active time. *Carranza v. Dovex Fruit Company*, 190 Wn.2d 612, 416 P.3d 1205 (2018) (concluding the per hour requirements in Minimum Wage Act (MWA), [RCW 49.46](#)).

“Piece-rate down time” is characterized by the duties outside of the scope of piece-rate work that do not lead directly to production or piece-rate pay. Piece-rate pay does not fully compensate agricultural employees for the duties they perform during piece-rate down time, so employers must provide separate compensation for time spent performing these duties. Piece-rate down time must be compensated on an hourly basis at the minimum wage or an agreed wage, whichever is greater.

8. What are examples of “piece-rate active time” and “piece-rate down time” duties?

Examples of piece-rate active time duties include:

- Going up and down ladders
- Moving between trees
- Emptying produce bins
- Weighing the product
- Operating equipment directly associated with production

Examples of piece-rate down time duties include:

- Traveling between orchards or fields and orchard or field blocks (by foot or vehicle)
- Attending mandatory meetings or trainings
- Transporting ladders to a company trailer (or from the trailer to the areas where picking occurs)
- Storing equipment and materials in appropriate storing locations
- Operating equipment that is not directly associated with production.
- Putting on and taking off required personal protective equipment.

Calculating Rest Period Pay

9. Do the employers need to compensate hourly and shift workers separately for their rest periods?

If an employee takes a rest period while performing hourly or shift work, an employer does not need to pay the employee separately for the rest period because the rest period has been paid “on the employer’s time.” To help ensure compliance with rest period requirements, a best practice for employers is to document when employees receive their rest periods. In the event that the department receives a missed rest period complaint, accurate employer records can demonstrate that the employer has met the rest period requirement under [WAC 296-131-020\(2\)](#).

10. How should an employer calculate the separate rates of pay for rest periods when employees alternate between piece-rate and hourly rates of pay?

Rest periods for employees who alternate between piece-rate and hourly rates of pay must be paid according to their basis of pay at the time they take their rest period.

For example, if an employee takes a rest period during piece-rate time (including both piece-rate active time and piece-rate down time), the employer must pay the employee their regular rate of pay or minimum wage, whichever is greater.

If an employee takes a rest period while performing hourly work, an employer does not need to pay the employee separately for the rest period because the rest period has been paid “on the employer’s time.”

11. How must employers calculate the amount owed for rest periods taken during an agricultural employee’s piece-rate time?

How much an employee must be paid for the rest period depends on whether the employee’s regular rate of pay—the average hourly rate of pay for the workweek not including rest periods—is above minimum wage.

To calculate the amount owed for rest periods, the employer must first calculate the employee’s regular rate of pay. This is done by dividing the total compensation earned in a workweek by the total hours of work (the “total hours of work” does not include the break time). The result is the regular rate of pay for the week.

- If the regular rate of pay is more than the minimum wage (\$13.50 per hour in 2020) then the employer should multiply the amount of time an employee spends on rest periods by the regular hourly rate of pay and add this amount to what they owe the employee for their piece-rate wages.
- If the regular hourly rate of pay is equal to or less than the minimum wage, then the employer should multiply all hours worked (including the rest periods) by the minimum wage (\$13.50 per hour in 2020). The result is the amount of compensation the employee is owed for the week. The employer must bring the piece-rate compensation up to this amount, guaranteeing that all hours for the workweek (including the rest periods) will be paid at the minimum wage.

The following examples show how employers should calculate the employee’s “regular rate of pay” for the workweek.

First, add up the employee’s total piece-rate earnings for the workweek and add the total to the total earnings the employee earned for performing piece-rate down time duties. Even if the employee earns different piece rates during the workweek, total all piece-rate earnings for

the week. Next, divide those earnings by the employee's **total** hours of work (exclude rest period time). This amount is the employee's "regular rate of pay."

- **If the regular rate of pay is more than minimum wage** (\$13.50 in 2020), multiply the regular rate of pay by the rest period time. This is the amount that must be paid separately for the employee's rest periods. No further calculations are needed for this employee.
- **If the regular rate of pay is equal to or less than minimum wage**, multiply all hours of work (include all hours of work and rest period time) by the current minimum wage. This is the amount that must be paid to the employee for all hours of work including time spent on rest periods.

EXAMPLE 1 (Employee's regular rate of pay is more than minimum wage):

Note: The employer has promised to pay 50 cents for every pound (unit) of strawberries picked and applicable minimum wage of \$13.50 per hour for piece-rate down time.

| | Sun. June 7 | Mon. June 8 | Tues. June 9 | Wed. June 10 | Thurs. June 11 | Fri. June 12 | Sat. June 13 | Totals |
|---|----------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|----------------------------|
| Units (bins/trees/pounds/etc.) | 0 | 253 | 249 | 210 | 195 | 183 | 350 | 1440 total units |
| Total Hours of Work (include rest periods) | 0 | 11 | 11.5 | 10 | 9.5 | 10 | 8 | 60 total hours |
| Subtract Rest Periods | 0 | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 120 minutes (2.0 hours) |
| Piece-Rate Active Time | 0 | 9 hours 40 min. | 9 hours 40 min. | 8 hours 40 min. | 8 hours 40 min. | 8 hours 40 min. | 6 hours 40 min. | 52 hours |
| Piece-Rate Down Time | 0 | 1 hour | 1 hour 30 min. | 1 hour | 30 min. | 1 hour | 1 hour | 6 hours |

For the above example:

1440 units x \$.50 per unit = \$720.00 (total piece-rate active time pay)
[1440 x \$.50 = \$720.00]

6 hours piece-rate down time x \$13.50 per hour = \$81.00 (total piece-rate down time pay)
[6 x \$13.50 = \$81.00]

\$720.00 (total piece-rate active time pay) + \$81.00 (total piece-rate down time pay) =
\$801.00 (total weekly pay **not** including paid rest breaks)
[\$720.00 + \$81.00 = \$801.00]

\$801.00 (total weekly pay **not** including rest period) ÷ 58 working hours (includes piece-rate active time and piece-rate down time) = \$13.81 per hour (regular rate of pay). This regular rate of pay is **more than** minimum wage (\$13.50 in 2020).
[\$801.00 ÷ 58 = \$13.81]
[\$13.81 > \$13.50]

\$13.81 per hour (regular rate of pay) x 2 hours (rest period total) = \$27.62 (total rest period pay). The employee must be paid this additional amount to compensate for rest periods during piece-rate time.
[\$13.81 x 2 = \$27.62]

\$801.00 (total weekly pay not including paid rest period) + \$27.62 (total rest period pay) =

\$828.62. The employee must be paid \$828.62 in gross wages for the workweek.
 [\$801.00 + \$27.62 = \$828.62]

EXAMPLE 2 (Employee’s regular rate of pay is equal to or less than minimum wage):

Note: The employer has promised to pay 50 cents for every pound (unit) of strawberries picked and the applicable minimum wage of \$13.50 per hour for piece-rate down time.

| | Sun. June 7 | Mon. June 8 | Tues. June 9 | Wed. June 10 | Thurs. June 11 | Fri. June 12 | Sat. June 13 | Totals |
|---|----------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|----------------------------|
| Units (bins/trees/pounds/etc.) | 0 | 194 | 202 | 152 | 175 | 183 | 127 | 1033 total units |
| Total Hours of Work (include rest periods) | 0 | 11 | 11.5 | 10 | 9.5 | 10 | 8 | 60 total hours |
| Subtract Rest Periods | 0 | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 120 minutes (2.0 hours) |
| Piece-Rate Active Time | 0 | 9 hours 40 min. | 9 hours 40 min. | 8 hours 40 min. | 8 hours 40 min. | 8 hours 40 min. | 6 hours 40 min. | 52 hours |
| Piece-Rate Down Time | 0 | 1 hour | 1 hour 30 min. | 1 hour | 30 min. | 1 hour | 1 hour | 6 hours |

For the above example:

1033 units x \$.50 per unit = \$516.50 (total piece-rate active time pay)
 [1033 x \$.50 = \$516.50]

6 hours piece-rate down time x \$13.50 per hour = \$81.00 (total piece-rate down time pay)
 [6 x \$13.50 = \$81.00]

\$516.50 (total piece-rate active time pay) + \$81.00 (total piece-rate down time pay) =
 \$597.50 (total weekly pay **not** including paid rest period)
 [\$516.50 + \$81.00 = \$597.50]

\$597.50 (total weekly pay **not** including paid rest period) ÷ 58 working hours (includes
 piece-rate active time and piece-rate down time) = \$10.30 per hour. This regular rate of
 pay is **less than** minimum wage (\$13.50 in 2020).
 [\$597.50 ÷ 58 = \$10.30]
 [\$10.30 < \$13.50]

The employee must be paid at least minimum wage for all hours worked and rest period
 time. Total hours of work 60 x \$13.50 per hour (minimum wage in 2020) = \$810.00.
 [60 x \$13.50 = \$810.00]

Because the employee has only earned \$597.50 (including piece-rate active time and
 piece-rate down time), the employer must make up the difference so the employee is paid
 at least minimum wage.
 \$810.00 total gross wages owed to the employee - \$597.50 total gross wages already paid
 to the employee = \$212.50 owed to the employee.
 [\$810.00 - \$597.50 = \$212.50]

EXAMPLE 3 (Hourly employee’s earnings for the workweek):

Note: The employer has promised to pay the employee \$20 per hour.

| | Sun. June 7 | Mon. June 8 | Tues. June 9 | Wed. June 10 | Thurs. June 11 | Fri. June 12 | Sat. June 13 | Totals |
|---|----------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|----------------------------|
| Total Hours of Work (include rest periods) | 0 | 11 | 12 | 10 | 9 | 10 | 8 | 60 total hours |
| Recorded Rest Periods | 0 | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 120 minutes (2.0 hours) |

The employer does not need to pay the employee separately for rest periods because the rest periods are paid “on the employer’s time.” Rest periods are considered hours worked and the employer is responsible for paying the employee for the time spent on a rest period.

For the above example:

60 total hours x \$20.00 per hour = \$1200.00 (total weekly pay)
 [60 x \$20.00 = \$1200.00]

12. May an employer and employee agree to a separate rate of pay for rest periods other than the piece-rate employee’s regular rate of pay?

Yes, but a separate rate of pay for rest periods must be paid at a rate of pay equal to or greater than the piece-rate employee’s regular rate of pay in order to satisfy [WAC 296-131-020\(2\)](#)’s requirement that rest periods are “on the employer’s time.” *Lopez Demetrio v. Sakuma Brothers Farms Inc.*, 183 Wn.2d 649, 355 P.3d 258 (2015). Paid rest periods provided under [WAC 296-131-020\(2\)](#) may be subject to voluntary bargaining between an employer and employee, but the agreed rate of pay must be equal to or exceed both the applicable minimum wage rate and the piece-rate employee’s regular rate of pay.

13. If an employer pays employees a bonus, does this bonus affect the piece-rate rest period pay?

If a bonus is “discretionary,” it does not affect the separately paid piece-rate rest period.

If a bonus is “non-discretionary,” it must be included in the piece-rate employee’s regular rate of pay. For non-discretionary bonuses, employers must either:

- retroactively re-calculate the separate paid rest period rate, or;
- credit the entire production bonus to the workweek in which the bonus is paid *and* calculate the separate paid rest period rate of pay *and* pay for rest periods during that workweek accordingly. (See “Harvest/Season End Bonus” scenario below).

A “discretionary” bonus, gift, or payment in the nature of a gift given on special occasions need not be included in the regular rate of pay. Such a “discretionary” bonus includes any bonus in which the employer retains sole discretion both that a bonus will be paid and that the amount will not be determined until the end, or near the end of the bonus period. Discretionary bonuses are given without any prior contract, agreement, or promise (express or implied), causing the employee to expect the bonus. Discretionary bonuses are not included in an employee’s regular rate of pay.

A “non-discretionary” bonus is any bonus which is promised to employees upon hiring or is the result of an agreement that includes, but is not limited to, inducing the employees to work more

steadily, more rapidly, more efficiently, or more accurately. If a bonus is based on work performance or production, it is considered a non-discretionary bonus. Non-discretionary bonuses must be included in the piece-rate employee's regular rate of pay.

EXAMPLE 3 - HARVEST/SEASON END BONUS

An employer promises to pay a non-discretionary bonus of \$1 per bin at the end of the harvest. The bonus is contingent on the employee remaining with the employer through to the end of the harvest. The employee is paid each week.

WEEK 1 (For ease of calculations, we will assume the employee completed the same work each week for the six weeks of the apple harvest)

Note: The employer has promised to pay \$15 for every bin (unit) of apples picked.

| | Sun. | Mon. | Tues. | Wed. | Thurs. | Fri. | Sat. | Totals |
|---|------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|----------------------------|
| Units (bins/trees/pounds/etc.) | 0 | 8 | 9 | 7 | 8 | 7 | 6 | 45 total units |
| Total Hours of Work (include rest periods) | 0 | 11 | 11.5 | 10 | 9.5 | 10 | 8 | 60 total hours |
| Subtract Rest Periods | 0 | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 20 min. (10 x 2) | 120 minutes (2.0 hours) |
| Piece-Rate Active Time | 0 | 9 hours 40 min. | 9 hours 40 min. | 8 hours 40 min. | 8 hours 40 min. | 8 hours 40 min. | 6 hours 40 min. | 52 hours |
| Piece-Rate Down Time | 0 | 1 hour | 1 hour 30 min. | 1 hour | 30 min. | 1 hour | 1 hour | 6 hours |

Bonus treated as retroactive to beginning of season:

270 bins picked in 6 weeks x \$1 bonus = \$270
 [270 x \$1 = \$270]

58 hours of work x 6 weeks = 348 hours of work
 [58 x 6 = 348]

\$270 bonus ÷ 348 total hours of work = \$.775 bonus per hour
 [\$270 ÷ 348 = \$.775]

2 hours of rest periods each week = 12 hours of rest periods
 12 hours of rest periods x \$.775 bonus per hour = \$9.30 total additional pay for separate paid rest periods
 [12 x \$.775 = \$9.30]

Bonus attributed to last workweek:

270 bins picked in 6 weeks x \$1 bonus = \$270
 [270 x \$1 = \$270]

\$270 bonus ÷ 58 total hours of work = \$4.655 bonus per hour
 [\$270 ÷ 58 = \$4.655]

2 hours of rest periods x \$4.655 bonus per hour = \$9.31 total additional pay for separately paid rest periods
 [2 x \$4.655 = \$9.31]

14. If an employee is paid an hourly rate of pay and receives a bonus, must the employee be paid separately for the rest periods?

No, the requirement to pay separate pay for rest periods does not apply to employees who are paid solely on an hourly rate of pay. However, payments (including bonuses) based on production meet the definition of piecework because the piece-rate is tied to the employee's output. Such piece-rate payments must be included in the separate pay for rest periods to satisfy the requirement that rest periods are "on the employer's time." Accordingly, if an agricultural piece-rate employee paid hourly receives a payment based upon production, separate pay for rest periods is required. The additional rest period pay would be based on the amount of the production based payments only and would not include the hourly rest period pay already provided.

Meal Period and Rest Period Documentation

15. How should an employer document payment for rest periods on the employee's pay statements?

To comply with [WAC 296-131-015](#), employers must document each piece-rate employee's rest period rate or rates of pay, the total hours spent on rest periods, and the gross amount paid for the rest periods. A best practice is to provide separate line-items in the pay statement that provide the rest period rate or rates of pay, the total hours spent on rest periods, and the gross amount paid for rest periods. However, a separate pay statement that provides this information would also comply with the WAC. For more information on documenting payments, see Administrative Policy ES.D.2 Recordkeeping and Access to Payroll Records (Agricultural Employment).

16. How should an employer document meal periods?

To help ensure compliance with meal period requirements, a best practice for employers is to document when employees receive their meal periods. In the event that the department receives a missed meal period complaint, accurate employer records can demonstrate that the employer has met the meal period requirement under [WAC 296-131-020](#)(1).