



Submission

Of the

New Zealand Retailers Association

To the

Transport and Industrial Select Committee

In respect of the

**Employment Relations (Rest Breaks and
Meal Breaks) Amendment Bill**

June 2010

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Introduction

These submissions are presented by the New Zealand Retailers Association

The Association is the largest Association representing the retail industry in New Zealand.

Our members include the major supermarket and general merchandise chains, specialised chains, traditional department stores and thousands of owner operators spread throughout the country.

Our membership also includes a number of specialised trade groups representing manufacturers, distributors and retailers in the plumbing materials, metal fastener, pet, equestrian, jewellery, bicycle and sporting goods sectors.

Retail sales currently total some \$65b per annum and the industry employs approximately 325,000 people (20% of the workforce) in over 49,000 outlets spread throughout the country.

Background

In May 2008, the Association made submissions on the Employment Relations (Breaks and Infant Feeding) Amendment Bill. We were not supportive of that bill. We provide for the committee an excerpt from the 2008 submission as an appendix.

General Submissions

As proposed, the Employment Relations (Rest Breaks and Meal Breaks) Amendment Bill (“the Bill”) seeks to relax the rest and meal break provisions for employees, moving the focus from prescription to flexibility and encouraging employers and employees to negotiate in good faith to find workable arrangements for breaks.

In its current form, the Bill would remove the clauses which define the minimum breaks and describe when they will be taken. It substitutes clauses which instead:

- Provide for meal breaks and paid rest breaks that provide the employee with reasonable opportunity for rest and refreshment, appropriate to the length of work period
- Allow reasonable and necessary restrictions in certain circumstances
- Allow for the timing and duration of breaks to be agreed between employer and employee
- Allow the employer to determine the arrangement if agreement cannot be reached

- Provide for compensatory measures to be agreed instead of breaks.

The allowable restrictions on breaks are for reasons around the nature of the work and relate to some duties being continued during a break, interruption of a break or where the employee may be required to take his or her break.

This will provide for sole charge retail situations where the employee might commonly have their break out the back and interrupt it if customers come in.

The compensatory provisions allow the parties to agree on a measure of compensation instead of breaks, or for the employer to be bound to provide compensation if breaks cannot be provided due to the nature of the work. Such measures will not be limited but may include time off work at another time.

The allowable restrictions will not invoke the compensation requirements. As long as the restrictions are necessary having regard to the type of work, and breaks are allowed but with the allowable restrictions, the requirement for breaks will have been met.

It may interest the committee to know that our advice has always been to pay employees who have to take a meal break onsite and interrupt it for customers.

The Association recommends the Employment Relations (Rest Breaks and Meal Breaks) Amendment Bill proceeds.

We wish to appear to speak to our submissions.

New Zealand Retailers Association
June 2010

Appendix 1

Excerpt from NZRA Submission to the Transport & Industrial Relations Select Committee on the Employment Relations (Breaks and Infant Feeding) Amendment Bill May 2008

2. Proposed Amendment Part 6D - Rest and Meal Breaks

We do get regular calls from members asking about breaks and when we suggest that the parties discuss and agree when breaks are taken, that is exactly what happens and the problem is resolved. Our standard advice to our members on the subject of determining suitable breaks is:

'Provision of breaks comes down largely to the employer's overall responsibility to provide a safe and healthy working environment. Sensible breaks will go a long way to preventing an accumulation of fatigue, causing harm. They will also promote morale and productivity. You cannot expect an employee to perform at their best if they do not have reasonable opportunities for rest.

Breaks need to match the work. Things to consider are the physical demands of the job, (ie any heavy lifting, whether the employee is able to move about and vary their movements, stand or sit etc), the length of the shift, and support for sole charge positions.

Once the two parties have reached an agreement for breaks, it becomes legally binding and ideally should be recorded in the employment agreement.

When considering what breaks are reasonable for your situation, some key points for general guidance are:

- Where the working day extends beyond 5 hours, custom and practice suggests that an unpaid meal break of 30 minutes or one hour should be provided near the middle of the shift. For a full day, one or more paid rest breaks of 10-15 minutes should also be provided.*
- Where the shift exceeds 9 hours, a second unpaid meal break may be appropriate if the working day extends into the evening.*
- Where the shift is half a day or less, a single paid rest break is appropriate.*
- For a sole charge position, appropriate arrangements must be made to allow the employee to attend to personal needs and also to ensure the security of both the staff and property.*
- Unpaid breaks mean that the employee is free to leave the premises. Where the employee remains on pay, they may be called upon to attend to an overflow of customers. But don't overlook the importance of a break away from work.'*

The vast majority of collective agreements provide for breaks and employees on individual agreements typically are provided or negotiate suitable breaks.

Legislation is not required to 'fix' something that works perfectly well already.

We believe that there is no evidence that this is a problem and by legislating to specify a solution there will inevitably be more problems and consequences than can be resolved by a shed full of mediators. To demonstrate, let's take some specific retail examples:

- Take for example an employee who works 1 hour after school each day: is that person to get a ten minute paid rest break during that hour? Is that what is seriously intended?*
- Take for example the employee who works 4.5 hours each day; is that person obliged to take a 30 minute unpaid lunch break in the middle of the 4.5 hours? That employee would effectively lose half an hour's pay each day because of this bill.*
- Take for example an employee who is scheduled to work 8 hours but has to stay behind because of a late delivery and actually works 8.25 hours. Does that employee claim a ten or fifteen minute paid break for the extra quarter hour? If that break is not taken will the employee be entitled to claim the ten minutes as paid time? Is that really what is intended?*
- It is common in retail for an employee to be in sole charge of a shop. In these circumstances the employer and employee agree that breaks will be taken when business is quiet and all such breaks will be paid. Is this bill suggesting that this will no longer be possible? Will the employee have to take an unpaid half hour lunch break? Will the employer therefore have to hire a person for half an hour per day to stand in for that employee? If this was even remotely possible would the stand-in employee have to take a ten or fifteen minute break half way through their half hour work period?*

Recommendation: that proposed Part 6D be deleted

Conclusion

We suggest that this well meaning but unfortunate interference is not necessary and will have unintended consequences that will occupy the Department of Labour and the Employment Relations Authority for years to come.

As an alternative why not merely give a guideline through the Department of Labour and require the parties to act fairly and reasonably but allow the parties through an employment agreement to reach their own decisions about breaks.