**CHANGES TO EMPLOYMENT RELATIONS ACT 2000 – REST AND MEAL BREAKS**

**CONSIDERATIONS FOR HEALTH AND DISABILITY SERVICE PROVIDERS & FUNDERS**

**The introduction of changes to the Employment Relations Act (Rest and Meal Breaks) will result in substantial system changes and additional cost increases for providers. There is a need for providers and funders to discuss the potential implications of these changes in an open and constructive manner.**

**NEW FRAMEWORK**

From 6 May 2019, a new framework is coming into effect in relation to employment obligations around rest and meal breaks. Whilst employers must currently provide paid rest breaks for employees, there is considerable flexibility allowed in respect of when and how these breaks may occur. There are currently no time periods specified, and the employer is allowed to impose reasonable and necessary restrictions in relation to the nature of the work. This flexibility has been removed in the new framework.

**Overarching obligation: “An employee is entitled to, and the employee’s employer must provide the employee with, rest breaks and meal breaks in accordance with the Act” (s 69ZD).**

A summary of the rest break requirements is attached as Appendix 1.

**APPLICATION OF NEW FRAMEWORK**

Employers must review whether their current framework meets the new obligations and rules. Most current individual employment agreements (IEAs) and collective employment agreements (CEAs) within the wider health and disability sector will likely not comply.

Key issues include:

The additional cost the new framework will place on the employer, and whether this cost will be met by the relevant funder/s and how additional costs can be mitigated. The actual cost will include the direct requirements being applied to the current framework (i.e. direct scheduling of breaks with specified timing), but will also include the identified additional costs below:

1. How will the new regime be applied for support workers with ‘split shifts’? Where employees have multiple ‘work periods’ during the same day, each work period will require a separate calculation in regard to the appropriate breaks to schedule and pay for;

2. How will the new regime be applied for single-staffed services? Will replacement workers be scheduled during each break? Will this be possible to find replacement workers? What will the additional cost be?

3. How will complex and vulnerable service users be supported when a single-staffed service support worker must take specified breaks (in particular, in relation to health and safety concerns). This will apply in all scenarios where one support worker is scheduled to support a client.

**SPECIFIC CONSIDERATIONS FOR HCSS SERVICE PROVIDERS & FUNDERS**

1. Can providers make the necessary changes to your rostering system (i.e. direct scheduling of breaks at specified times)? This will include ensuring appropriate staffing support for service users in all services when each individual employee is scheduled to take a break. What are the related costs of doing this and how will it be funded?

2. If providers apply the new framework to current rostering patterns, what is the estimated additional cost to pay staff for the specified breaks and how will it be funded? Note that for support workers, in-between travel time (as set out in the IBT legislation) will need to be included in ‘work periods’.

3. What will the impact be for single staffed services/visits? How many employees and service users will be affected? Need to identify exactly which services/visits this will apply to (e.g. including wakeovers, client home visits, family carers etc). Will providers need to roster additional back up staff to cover single staffed shifts? How often will this need to occur, and what is the estimated additional cost? Will there be difficulty in finding appropriate staff to do this and how will it be funded?

6. For health and safety risk management purposes, it should be considered whether it is necessary to identify staff taking specified breaks as a potential health and safety hazard to be managed directly (and therefore whether the necessary related plans and directions need to be established).

7. In addition to support workers, are there additional roles that may be affected (i.e. other service-related roles where there will be funding impacts also)?

Appendix 1

**REST BREAK REQUIREMENTS**

To calculate which rest and meal breaks apply, it is first necessary to determine the employee’s relevant ‘work period’. “Work period” is defined as beginning at the time an employee starts work and ending with the time at which an employee finishes work, including all authorised breaks, in accordance with the terms and conditions of the employee’s employment. So, for HCSS support workers, it is likely there will often be ‘split’/multi work periods to consider.

**Rest breaks: (s 69ZD)**

• Work period 2-4 hours: 10 minute paid rest break

• Work period 4-6 hours: 10 minute paid rest break and 30 minute meal break

• Work period 6-8 hours: 2 x 10 min paid rest breaks and 30 minute meal break

* 1. • Work period over 8 hours:

o During first 8 hours: 2 x 10 min paid rest breaks and 30 min meal break

* 1. o During work period beyond 8 hours: same entitlements as 2-4 hrs, 4-6 hrs, 6-8 hrs periods above.

**Timing of breaks: (s 69ZE)**

The employer and employee can agree on the times for the rest and meal breaks to be taken during the employee’s work period/s. Where there is no agreement, the employer must, so far as is reasonable and practicable, provide the employee with the break/s as follows:

• 2-4 hour work period: rest break in the middle of the relevant work period;

• 4-6 hour work period: the rest break 1/3 through the work period; and the meal break 2/3 through the work period;

• 6-8 hour work period: rest break halfway between start and meal break; and meal break in the middle of the period; and another rest break halfway between the meal break and the end of the period.

• Over 8 hour work period: for first 8 hours, the same as 6-8 hour period above applies; then for subsequent hours over and above, the same regime applies as 2-4, 4-6, 6-8 hour periods above.