

# Flat Rate Technicians: Paid Rest Breaks

*Presented by:*

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## Regulations Require Paid Rest Breaks

- WAC 296-131-020(2) provides agricultural employees “a rest period of at least ten minutes, **on the employer’s time**, in each four-hour period of employment.”
- WAC 296-126-092(4) provides non-agricultural employees “a rest period of not less than ten minutes, **on the employer’s time**, for each four hours of working time.”

## Demetrio Case

- On July 16, 2015, the Washington State Supreme Court decided that employers of agricultural “piece rate” workers must pay those workers an additional amount for the two ten-minute rest breaks required in an eight-hour work day. *Demetrio v. Sakuma Bros. Farms, Inc.*
- The regulations’ phrase “on the employer’s time” means the employer must pay for break time. Piece rate workers are not accruing pay during breaks. So the Court reasoned the regulation requires pay separate from the piece rate for rest breaks.

## Applicability to Service Techs

- The rule from *Demetrio* is that employees must be paid for the time they are on rest breaks.
- Service techs who are paid at flat rate, like piece rate workers, are only earning compensation when they are working. Consequently, we believe the courts will find that the applicable regulation requires flat rate techs to be paid separately for rest breaks.

## How to Calculate the Rate of Pay for Rest Breaks

- The Court in *Demetrio* held that the employer must pay the piece rate employees for the rest break time at their “regular rate of pay.” The regular rate of pay is determined by dividing the total compensation for the pay period by the number of hours actually worked during that pay period (not including the rest breaks).
- Calculate each tech’s “regular rate” by dividing the total compensation for the pay period by the number of hours actually worked during that pay period (not including the rest breaks), then pay that rate for the rest brakes (20 minutes per day, 100 minutes per 5-day work week).

## How to Calculate the Rate of Pay for Rest Breaks - Example

- Tech works 42 actual hours in the workweek, not including breaks.
- Tech flags 48 hours at \$25 per hour, earning \$1200 that week.
- “Regular hourly rate” for that week is  $\$1200/42\text{hrs.} = \mathbf{\$28.58}$  (rounded up).
- Pay for rest breaks for 5 workdays, 100 min. =  $1.67\text{hrs.} \times \$28.58 = \mathbf{\$47.73}$ .

## Do We Have to Pay for Past Pay Periods?

- The Court did not decide whether this new requirement will be applied retroactively. More likely than not, the Court would require past payments.
- Going forward, we recommend that all dealers who pay their service techs by flat rate should now pay those techs an additional amount for the two ten-minute rest breaks per day.
- However, dealers may ultimately be held responsible for unpaid wages for up to three years in the past.

## What if Techs are Already Paid for Actual Work Hours, Including Breaks?

- If a service tech is already paid for a rest break under your compensation plan, you do not need to pay them twice for the same rest break.
- When a service tech is being paid for actual working (“clocked”) hours, and they’re rest break is counted toward time worked, they are already paid for that rest break.

## Possible Pay Adjustments

- Rest breaks constitute approximately 4-5 percent of a workweek (100min./2400min.)
- A flag rate reduction of 4 percent would roughly offset the rest break pay.
- You might consider informing service techs you will not increase their rate at the next compensation review date because you are paying an additional amount for rest breaks.

*Thank you!*



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