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REST BREAKS AND THE RIGHT TO URINATE ON COMPANY TIME

Marc Linder and Ingrid Nygaard
CHAPTER 7

How the Other Half Rests: How Many Workers Have Rest Periods?

Our national experience . . . has shown clearly enough that false ideas of economic gain, blind to physiological law, must lead, as they led through the 19th century, to vast national loss and suffering.


Chapter 6’s overview of the sparse legal framework supporting workplace rest periods has revealed that relatively few workers have a statutory right to rest. The lack of such an entitlement does not, however, mean that nonstatutorily required rest periods may not be common. One major basis for rest periods is the collective bargaining agreements that embody the struggles of organized workers to improve working conditions. Even in the absence of contractual obligations, employers in unorganized plants may also offer rest periods because they wish to forestall unionization or because they accept the finding that periodic rest enhances productivity. The data provided here derive from surveys of employers and, to a lesser extent, of employees that a variety of nongovernmental and governmental entities have conducted on the prevalence of rest periods since before World War II, as well as from an examination of large numbers of collective bargaining agreements. Unless otherwise specified, the discussion here refers to rest periods—not to rules permitting workers to go to the bathroom outside of official rest breaks. Although even collective bargaining agreements may not always precisely reflect plant customs and practices, together with the independent surveys they offer the best available evidence of the trends in the availability of formal rest periods in the United States.
Putting Speculation about Rest to Rest

Employee welfare demands in this area are so obvious that a statement to that effect is not needed. Just as the consumption process is essential to humankind, so is the elimination process, and these needs have not greatly changed in the last 40 years. With respect to the length of the rest period, . . . experience has shown that 10 minutes is reasonable.


One perspective from which to judge the spread of paid rest periods emerges from surveys conducted by employer associations, which coincided with firms' efforts to impress their employees with the financial significance of what one major industrial organization titled "Wages for Time Not Worked." The National Industrial Conference Board (NICB), big business's nominal economic statistician, collected summary data from employers on rest periods beginning in the 1930s. Although the NICB largely refrained from editorializing on these personnel policies, it did report the U.S. Department of Labor's view during World War II that at least "the British have convinced themselves that when work is repetitive . . . it is a very wise thing to provide regular rest-pauses." And a decade later it lightheartedly observed that "formal rest periods" were "also known as the 'coffee problem.'" 1

In its 1936 nationwide "Survey of Voluntary Activities for Improvement of Working Conditions," the NICB questioned almost 2,500 firms employing more than 4.5 million workers. Overall, 86 percent of the firms employing 64 percent of these workers provided no rest periods at all. Within manufacturing, this proportion varied from 93 percent in the leather industry to 72 percent in food products; half of the mercantile companies provided no rest period. The absence of rest periods was unambiguously associated with firm size, declining monotonically from 94 percent in firms with fewer than 100 employees to 66 percent among those with more than 10,000. The NICB's survey of personnel practices in 1937 revealed not only that two-thirds of companies had adopted no rest periods for their factory workers, but that even among the third that did offer them, "only certain classes of employees most subject to fatigue are usually given this privilege." In the NICB's 1939 survey of 2,700 manufacturing and nonmanufacturing companies, only 16 percent indicated that they "scheduled rest periods for fatigue" for at least some workers—a figure that might have been artificially buoyed by the fact that firms with
“progressive” policies were overrepresented. The proportions ranged from a low of 4 percent in petroleum to a high of 32 percent in rubber products, and rose almost monotonically from 8 percent in firms of fewer than 100 employees to 34.5 percent in those with more than 10,000. Some firms stated that rest periods were confined to female employees. In the first of its *Personnel Practices in Factory and Office* studies from 1940, which included only wage earners, the NICB found that only 25 percent of firms provided rest periods, a figure that rose from 15 percent among firms with fewer than 100 wage earners to 45 percent among those with more than 5,000. Of firms that provided rest periods, almost half granted them to both men and women, one-third to women only, and one-sixth to men alone (in shops where only men were employed). At the height of World War II, and perhaps under the influence of greater union strength and the spread of collective bargaining, the NICB survey began to show a greater prevalence of rest periods, as it published more detailed data. For first-shift hourly workers, 49 percent of firms provided rest periods to women in the morning and 46 percent in the afternoon; the corresponding figures for men were 26 percent and 22 percent respectively. Again, the proportion of large establishments scheduling rest periods far exceeded that among smaller firms. Thus whereas 72 percent of all firms with 5,000 or more hourly workers per establishment provided rest periods to women in 1943, only 30 percent of those with fewer than 250 did; the figures for men were 43 percent and 14 percent respectively. The modal rest period for both sexes was ten minutes. About 90 percent of all second- and third-shift workers received rest periods.2

The first post–World War II NICB survey, for 1948, showed a slight increase in the proportion of firms scheduling rest periods for first-shift female hourly workers—52 percent—whereas the figure for men rose significantly to 38 percent. Approximately half of all firms offering rest periods scheduled two ten-minute periods; the next most common, two fifteen-minute periods, accounted for about one-ninth of those for men and one-fifth of those for women. The proportion of firms scheduling rest breaks for second- and third-shift workers declined sharply to less than three-tenths for men and one-third for women. By 1952, 61 percent of those surveyed scheduled rest periods for hourly female employees, compared to 52.5 percent for men. On the later shifts, slightly more than half of the companies provided them to women and somewhat under half to men. The overall increase in the proportion of firms with rest periods vis-à-vis the previous survey, when it was about one-third, the NICB in part attributed to the discovery that formal rest periods were “a means of gain-
In 1954, 56 percent of firms reported giving rest periods to male hourly workers compared to 65 percent of women. Similar increases were recorded for most categories of second- and third-shift workers. Of the largest establishments, employing 5,000 or more first-shift workers, the proportion offering rest periods to men and women was almost the same—68 percent and 69 percent respectively. Ten years later, the NICB surveyed manufacturing firms only, but it sought information from all employing 250 or more employees. Although the way in which it displayed the data makes this survey difficult to compare with those conducted earlier, it appears that by 1964, the year in which Title VII was enacted, a greater proportion (61 percent and 57 percent respectively) of such firms offered rest periods to male blue-collar employees than to women. In the Conference Board’s last survey, conducted in 1979, 79 percent of responding manufacturing firms reported providing paid rest periods to their production workers, the modal pattern being two ten-minute breaks; operating employees at 65 percent of utility companies also received breaks.3

The U.S. Chamber of Commerce has also been conducting surveys of employers for several decades to gauge the cost to U.S. firms of fringe benefits. The latest survey covers more than 1,000 firms employing 2.6 million workers. Unfortunately, the survey classifies paid rest periods together with lunch periods, washup time, travel time, clothes-change time, and get-ready time, making it impossible to identify expenditures solely for rest periods. The proportion of companies providing any of the types of this group of benefit rose from 57 percent in 1955 to 83 percent in 1975 (almost all of that increase occurring in the late 1960s); since that time, however, the share actually declined, falling to 78 percent by 1993 and 1994, the same level that had been attained already by 1969.4

The average cost of this whole category of benefit, as a proportion of payroll of companies paying employee benefits, after rising modestly also fell from 3.9 percent in 1955 to 3.6 percent in 1993; FICA taxes, in contrast, rose from 1.8 percent to 6.9 percent. Similarly, as a share of payroll of all companies (including those not paying this type of benefit), rest-period-type benefits rose from 1.9 percent in 1955 to 3.6 percent by 1975, falling again to 2.3 percent by 1993, the same level as in 1957. Finally, the Chamber of Commerce estimates that rest-period benefits as share of wages and salaries rose from 1.0 percent in 1929 to 3.0 percent in 1955 and then fell to 2.4 percent by 1993; in contrast, total benefit payments rose continuously from 3.0 percent in 1929 to 17.0 percent in 1955 and then to 39.3 percent in 1993. The survey reveals a significant variation among in-
dustries. In 1993 the broader category of rest-period-like benefits varied as a proportion of payroll from virtually nothing in department stores to 5.6 percent in printing and publishing.5

Another approach to capturing the extent of rest periods was offered by a survey financed by big business. Relying on fifty-one responses to questionnaires sent to 200 major U.S. firms, Theresa Greis concluded that the average number of annual hours of paid break time at the firms that offered this benefit rose from 50 in 1947 to 63, 67, and 69 in 1969, 1974, and 1979 respectively. Although there may be no obvious reason to doubt that the largest firms may have provided somewhat longer rest periods over those three decades, Greis’s survey is too flawed and arbitrary to prove it.6

A survey conducted in 1977 by the University of Michigan Institute for Social Research—developed jointly by the U.S. Department of Labor to “assess the frequency and severity of work related problems experienced by employed people, with special emphasis on those types of problems that were or might become matters of public policy”—asked a national sample representative of all employed adults about rest periods. In response to the question “about how much time do you spend during an average workday on regular coffee breaks or scheduled rest breaks,” 39 percent of full-time workers answered, “No time” at all. Moreover, 45 percent stated that they also spent no additional time at work “on things like talking to friends, doing personal business, or just relaxing.”7

The largest set of data on the prevalence of rest periods was a by-product of an internal federal government program. In the late 1970s, the U.S. Bureau of Labor Statistics (BLS) began collecting data on paid rest periods from employers to satisfy the Office of Personnel Management’s need for an overview of private-sector benefits as a reference point for the federal government’s own employment practices. Although the BLS terminated collection of data on this particular benefit in 1992–93—ironically because it is “rarely in the news and infrequently discussed among policy makers”—appendix 2 shows the percentage of full-time employees who did not receive paid rest periods from 1979 to 1993.8

The figures in appendix 2 are intended to be representative for about 100 million employees; they include, in the latest surveys, 34 million workers in firms of more than 100 employees, 44 million in those of fewer than 100, and 14 million governmental employees. The trend they reveal is that over time the practice of granting rest periods has become less prevalent in medium and large establishments (with 100 or more employees), where the proportion of employees without rest periods rose from one-fourth in 1979 to one-third in the early 1990s. In small establishments (with fewer than 100 employees), where data were not collected until the
1990s, more than half of employees received no rest periods. At the same
time fewer than half of state and local government employees lacked rest
periods.

More detailed data shed additional light on the nature and distribution
of rest periods. At medium and large private establishments in 1993, for
example, employers reported that 24 percent of all full-time blue-collar
and service employees were without paid rest periods; among full-time
employees in goods-producing industries, 19 percent of blue-collar and
service employees and 38 percent of clerical and sales employees received
no rest periods; the corresponding figures in service-producing industries
were 31 percent and 33 percent respectively. In all medium and large pri-
vate establishments, one-quarter of union and one-third of nonunion em-
ployees were without rest periods. More than half (51 percent) of part-time
blue-collar and service employees and one-third of clerical and sales em-
ployees were without rests. In small private establishments, 75 percent of
part-time production and service employees and 66 percent of clerical and
sales employees received no rest time in 1990. Among full-time blue-collar
and service employees in state and local governments in 1992, 32 percent
of unionists and 42 percent of nonunionists received no rest time, together
with 70 percent of part-timers. In 1989–90, 35 percent of all private-sector
blue-collar workers received no paid rest time. In 1991–92, 43 percent of
all nonagricultural full-time employees lacked paid rest periods.9

It is unlikely that the BLS's methodology leads to overlooking signifi-
cant numbers of workers by virtue of their receiving unpaid rest periods,
since the federal Fair Labor Standards Act requires that any rest period
from five to twenty minutes be compensated and few workers receive
nonmeal rest periods in excess of twenty minutes. The BLS survey data
do, however, exclude agricultural workers, who typically receive no paid
rest periods. Even in the few states where farmworkers are protected by
rest-period statutes, some employers engage in the same "petty pilferings
of minutes" that Victorian factory inspectors uncovered in enforcing the
English maximum hours statute for women and children.10 In Germany
it may have "become unmodern" for employers to nibble at workers' rest
and meal periods, but not in the United States. For example, by denying
milkers in Washington State their statutorily prescribed ten minutes' rest
every four hours, some dairy owners behave like Victorian scofflaws, ap-
parently perceiving a profit amounting to "a greater temptation than they
can resist; they calculate upon the chance of not being found out; and
when they see the small amount of penalty and costs, which those who
have been convicted have had to pay, they find that if they should be de-
tected there will still be a considerable balance of gain."11
The lack of universal rest and meal periods not only has physiological and psychological consequences for the individual workers so deprived, but also creates significant barriers to the kind of workplace communicative dynamic that is commonly a prerequisite to the group processes of coalescence, cohesion, and coherence that underlie self-organization. This insight underlay the ruling by the U.S. Supreme Court at the end of World War II that delegitimated the power of employers—at least if they were subject to the National Labor Relations Act—to prohibit employees from soliciting union membership on company property but “on [their] own time during lunch periods.” Relying on decisions by the National Labor Relations Board, the Supreme Court recognized that “luncheon or rest periods” are “the very time and place uniquely appropriate and almost solely available” to factory workers to exercise “their normal right to ‘full freedom of association’ in the plant.” This judicially vindicated right to use the liberated interstices of the working day as free time and space to forge the organizational wherewithal to struggle for better working conditions is patently useless where the state has not seen fit to guarantee such rest at work unencumbered by employer supervision. Nevertheless, many construction industry collective bargaining agreements that provide for rest periods specifically forbid workers to “congregate” during these breaks.

The Prevalence of Rest Period Clauses in Collective Bargaining Agreements

All recognize that an employee stealing valuable Company property or blowing up a Company machine deserves a higher degree of discipline than an employee who overextends her rest period by two minutes.


“We don’t regulate the line by your bowels; you regulate your bowels by the line.”

Ely Chinoy, “Manning the Machines — The Assembly-Line Worker,” in The Human Shape of Work (1964) (quoting a foreman’s reply to an autoworker’s complaint that he could not leave the line when he needed to use the toilet)

Mr. Vacek testified that so far as he knew, there were no written rules which prohibited employees from urinating on the editor’s desk.


The lack of and management refusal to agree to rest breaks have frequently impelled workers to seek self-organization and collective representation. In one particularly brutal case, the manager of a large tortilla
plant in Chicago, in response to workers' request for a regularly scheduled rest break, "called them 'a bunch of pigs' and sent them home early as punishment." Thus began a union organizing campaign in the 1980s. In the poultry industry, United Food and Commercial Workers Union officials state that whereas emergency bathroom breaks are now incorporated into the agreements that the union has been able to achieve, workers in nonunion plants are either not permitted to go to the bathroom outside of sparsely granted and revocable scheduled rest periods or are subject to increasingly severe discipline for making such requests.14

By the same token, and surprising as it may seem, far from every collective bargaining agreement provides for rest periods. Indeed, some contracts specifically state that there will be no "rest periods or other non-working time established during working hours." In continuous process industries such as steel, even organized workers for years lacked formal breaks, having to grab a meal or go to the toilet whenever they could. In some cases, after unions in such industries had finally negotiated breaks, they were later forced to abandon them as one of many givebacks or concessions that have become common. Even where contracts include break provisions, they may be quite restrictive, specifying, as did one between Du Pont and the Machinists Union, that "Each employee shall obtain permission of his foreman or supervisor prior to taking such relief period."15

One of the more interesting pieces of evidence of how commonly such provisions are absent is litigation successfully challenging the Oregon rest-period regulations. Although the Oregon Bureau of Labor and Industry has issued a regulation requiring employers to provide a ten-minute paid rest period every four hours, it also excludes "employees covered by a collective bargaining agreement." The members of the class suing the Oregon labor commissioner, who complained that the regulation penalized their union membership, belonged to unions that were unable to bargain for paid rest periods. By the same token, even unions that have negotiated breaks may not be indifferent to the existence of statutorily guaranteed rest periods; for just as a statutory minimum wage may be regarded as a "free" baseline for which unions do not have to trade anything in order to achieve higher wages, so too the existence of legally mandated rest periods may, despite some economists' claim that there is no such thing as a free lunch break, enable unions to concentrate on bargaining for some other condition of employment.16

The survey of major collective bargaining agreements, conducted by the BLS until the Reagan administration eliminated this data collection program, underscores that not even union power guarantees negotiated rest periods for workers. Of the 6,593,800 workers covered by the 1,550
such agreements in force on January 1, 1980, the last time that the BLS was authorized to gather these figures, only 41 percent received rest periods; 59 percent of the workers were covered by agreements that made no reference to rest periods. The preceding nine surveys, conducted between 1970 and 1978, identified between 56 and 69 percent of workers under contracts without rest periods. Two earlier BLS analyses of collective bargaining provisions revealed that rest periods were even less common in the 1950s. In 1952–53 and 1959, 75 percent and 77 percent respectively of workers were employed under contracts lacking a rest-period provision.

The difference over time, however, may be more apparent than real. In the 1950s, the BLS conceded that its data probably underestimated the prevalence of rest periods in part because they were covered by policies not mentioned in contracts or because the existence of state laws requiring rest periods for women workers made it unnecessary to specify them. In addition, the BLS did not include “personal allowance” or “relief” time provisions, which are also rest periods. Moreover, at some companies where workers in fact receive rest periods, the collective bargaining agreement may be silent on the issue because management refuses to formalize the benefit. GE, for example, which has always adopted an extremely restrictive view of collective bargaining and arbitration, has generally excluded break-period provisions from its collective bargaining agreements even where its workers receive breaks.

The absence of collectively bargained rest periods for 1980 varies enormously among industries, ranging from only 4 percent of retail trade workers to 95 percent in primary metals. Whereas 92 percent of covered apparel workers lacked rest periods, 40 percent of workers in transportation equipment, 33 percent in communications, 32 percent in hotels and restaurants, and 21 percent in food manufacturing did. This ranking roughly mirrored that of a quarter century earlier.

A sampling of the large number of union agreements kept on file by the Bureau of National Affairs (BNA) confirms this general structure. In 1992 rest periods were not mentioned in 56 percent of the agreements. The BNA also confirms that the typical pattern is one ten- or fifteen-minute break during each half of the shift. Thirty years earlier, the BNA found that 74 percent of contracts called for rest periods, sometimes provided only for women. The lower rate of coverage in 1961 may in large part have reflected the practices of that time; such provisions as lunch and rest periods were “often not made by contract but rather left in that group of working conditions handled exclusively by management or through informal agreement.” More revealing still is the survey conducted by Commerce Clearing House in the mid-1950s, which concluded that “Provision
for rest periods... is usually limited to women and those men whose jobs are physically oppressive or who cannot leave their posts for short intervals without a substitute."^{20}

The strongest unions, in exchange for ceding control over the process of production to management, have negotiated the longest rest periods for their members. Thus whereas generally the modal rest periods for workers who have them have totaled twenty and thirty minutes for many years, as early as 1968 the UAW had secured forty-eight minutes paid relief time for assembly-line workers at Ford. The 1993 national agreements between the UAW and the three large U.S. automobile manufacturers provide for twenty-three minutes of relief time before and after lunch for all workers employed in continuous manual operations that cannot be left unattended as well as in other operations that the employer determines afford workers “no control over their work pace.”^{21}

Many collective bargaining agreements, however, provide for only one rest period. In the meatpacking industry, for example, contracts until the 1980s generally prohibited uninterrupted work periods of longer than two and a half to three hours, and two ten-, fifteen-, or even twenty-minute rest periods were common; some contracts even explicitly stated that “employees are expected to take such rest periods.”^{22} But in the 1990s, the industry, dominated by Iowa Beef Processors, the world’s largest meatpacker, typically was offering only one (morning) break during eight-hour shifts in both its unionized and nonunion plants.^{23}

Finally, a comparison of the rest-period provisions in the collective bargaining agreements that the BLS monitored from the 1930s until the early 1980s shows both that most lacked any provision at all and that the total length of the rest period reached its daily maximum of twenty to thirty minutes early on, during or shortly before or after World War II, and rarely advanced thereafter. The major exceptions were the UAW contracts with Ford and International Harvester, which began at twenty minutes in 1961 and advanced to forty-eight minutes and thirty-six minutes by 1968 and 1964 respectively. Stagnation, however, was the usual pattern. At Armour, Lockheed, Rockwell International, and Western Union, the benefit of twenty (or in one case thirty) minutes that was initiated in 1961, 1952, 1943, and 1946 respectively remained unchanged. In 1945 New York City laundries introduced one fifteen-minute break for the months of July and August, which two decades later was converted into one ten-minute break year-round. One firm, Martin Marietta, introduced two ten-minute breaks in 1944, which it bought back four years later with a five-cent/hour wage increase.^{24}