

BEFORE THE COMMISSIONER
OF THE
BUREAU OF LABOR AND INDUSTRIES

In the Matter of Rules Pertaining to)
Meal and Rest Periods) PROPOSED RULE
)

839-020-0050
Meal and Rest Periods

(1) Except as otherwise provided, every employer shall provide to each employee an appropriate meal period and an appropriate rest period.

(a) "Appropriate meal period" means:

(A) A period of not less than 30 minutes during which the employee is relieved of all duties for each work period of not less than six or more than eight hours. If the work period is seven hours or less, the meal period is to be taken between the second and fifth hour worked. If the work period is more than seven hours, the meal period is to be taken between the third and sixth hour worked; or

(B) A period in which to eat (for each work period of not less than six or more than eight hours) while continuing to perform duties or remain on call, which is not deducted from the employee's hours worked. This is permitted only in those cases where the employer can show that [*the nature or*]**exceptional and unanticipated** circumstances of the work prevent the employee from being relieved from all duty.

[(C) Where the employer can show that industry practice or custom has established a paid meal period of less than 30 minutes (but no less than 20 minutes) during which employees are relieved

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of all duty, such industry practice or custom will satisfy the meal period provisions of section (1) of this rule.]

(b) "Appropriate rest period" means: A period of rest of not less than ten minutes for every segment of four hours or major part thereof worked in one work period without deduction from the employee's pay. The period of rest must be in addition to and taken separately from the time allowed for the usual meal period. Insofar as feasible, considering the **ordinary** nature [*and circumstances*] of the work, such period of rest is to be taken by an employee approximately in the middle of each four hour (or major part thereof) segment. The rest period is not to be added to the usual meal period or deducted from the beginning or end of the work period to reduce the overall length of the total work period.

(A) The provisions of section (1) of this rule regarding appropriate rest periods do not apply when all of the following conditions are met:

(a) The employee is 18 years of age or older; and

(b) The employee works less than five hours in any period of 16 continuous hours; and

(c) The employee is working alone; and

(d) The employee is employed in a retail or service establishment, i.e., a place where goods and services are sold to the general public, not for resale; and

(e) The employee is allowed to leave the employee's assigned station when the employee must use the restroom facilities.

(2) In the absence of regularly scheduled meal periods and rest periods, it will be sufficient compliance with section (1) of this rule when the employer can show that the employee has, in fact, received the time specified **within the time periods required by section (1)**. This is

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permitted only in those cases where the employer can show that the ordinary nature [*and circumstances*] of the work prevent the employer from establishing and maintaining a regularly scheduled meal period and rest period.

(3) For the purposes of 839-020-0050, factors to be considered in determining the **ordinary** nature [*or circumstances*] of work which prevent an employee [*being relieved of all duties or the scheduling of regular*] **from receiving regularly scheduled** meal and rest periods may include, but are not limited to, the following: The safety and health of employees, patients, clients, and the public; availability of other employees to provide relief; qualifications (or lack thereof) of those available to provide relief; costs involved in the shutdown/startup of machinery in continuous-operation industrial processes; **or** intermittent and unpredictable work flow not in the control of the employer/employee[; *unforeseeable equipment failures, emergencies, acts of nature*].

(4) **For the purposes of OAR 839-020-0050(1)(a)(B), factors to be considered in determining exceptional and unanticipated circumstances of the work prevent the employee from being relieved of all duty may include, but are not limited to, the following: Unanticipated absences of scheduled employees; unforeseeable equipment failures; emergencies; acts of nature; or imminent and unanticipated adverse weather conditions.**

(5) As used in this rule, "work period" means the period between the time the employee begins work and the time the employee ends work, and includes rest periods, and any period of one hour or less (not designated as a meal period) during which the employee is relieved of all duties.

Meal periods are not included as part of the work period unless the employee continues to perform duties during the meal period.

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[(5)]**(6)** The provisions of this section regarding appropriate meal periods and rest periods may be modified by the terms of a collective bargaining agreement if the provisions of the collective bargaining agreement entered into by the employees specifically prescribe rules concerning meal periods and rest periods.

[(6)]**(7)** Pursuant to the provisions of ORS 653.261(5), if an employer agrees, an employee may waive a meal period if all of the following conditions are met:

- (a) The employee is employed to serve food or beverages, receives tips, and reports the tips to the employee's employer;
- (b) The employee is at least 18 years of age;
- (c) The employee voluntarily requests to waive the employee's meal periods no less than seven calendar days after beginning employment;
- (d) The employee's request to waive the employee's meal periods is in writing and is signed and dated by both the employee and employer;
- (e) The employer retains and keeps available to the commissioner a copy of the employee's request to waive the employee's meal period during the duration of the employee's employment and for no less than six months after the termination date of the employee;
- (f) The employee is provided with a reasonable opportunity to consume food during any workshift of six hours or more while continuing to work;
- (g) The employee is paid for any and all meal periods in which the employee is not completely relieved of all duty;
- (h) The employee is not required to work longer than eight hours without receiving a 30-minute meal period in which the employee is relieved of all duty;

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(i) The employer makes and keeps available to the commissioner accurate records of hours worked by each employee which clearly indicate whether or not the employee has received a meal period; and

(j) The employer posts a notice provided by the commissioner regarding rest and meal periods in a conspicuous and accessible place where all employees can view it. Notices that comply with this rule are available upon request from the Bureau of Labor and Industries.

[(7)]**(8)** The written request to waive the employee's meal periods referred to in subsection [(6)]**(7)**(d) of this rule must be made using a form provided by the commissioner in the language used by the employer to communicate with the employee. Written request forms that comply with this rule are available upon request from the Bureau of Labor and Industries.

[(8)]**(9)** Either the employer or employee may revoke the agreement for the employee to waive the employee's meal periods by providing at least seven (7) calendar days written notice to the other.

[(9)]**(10)** Notwithstanding the provisions of section [(8)]**(9)**, an employee who has requested to waive meal periods pursuant to sections [(6)]**(7)** and [(7)]**(8)** of this rule may request to take a meal period without revoking the agreement to waive such periods. Such requests must be submitted in writing to the employee's employer no less than 24 hours prior to the meal period(s) requested.

[(10)]**(11)** An employer may not coerce an employee into waiving a meal period.

[(11)]**(12)** An employer will be considered to have coerced an employee into waiving the employee's meal period under the following circumstances:

(a) The employer requests or requires an employee to sign a request to waive meal periods;

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(b) An employee is required to waive meal periods as a condition of employment at the time of hire or at any time while employed;

(c) The employer requests or requires any person, including another employee, to request or require an employee to waive meal periods; or

(d) The employee signs a form requesting to waive meal periods prior to being employed for seven calendar days;

[(12)]**(13)** Minors under the age of 18 are not subject to this rule. Rest and meal period requirements for minors under 18 years of age are provided in OAR 839-021-0072.

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