

Bureau of Labor and Industries
Proposed Rule

839-020-0051

Rest Periods for Expression of Breast Milk

(1) ORS 653.077 applies to employers who employ 25 or more employees in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which the rest periods are to be taken or in the year immediately preceding the year in which the rest periods are to be taken.

(2) ORS 653.077 requires a covered employer to provide reasonable rest periods to accommodate an employee who needs to express breast milk for her child 18 months of age or younger. Any employer not covered by ORS 653.077 and these rules may provide rest periods or other accommodation for expression of breast milk pursuant to its own policies or by agreement or contract with employees.

(a) A “reasonable rest period,” unless otherwise agreed to by the employer and the employee, is no less than 30 minutes during each 4-hour work period or major part of a 4 hour work period to be taken by the employee approximately in the middle of each work period.

(A) If feasible, the employee will take the rest periods to express milk at the same time as the rest periods or meal periods that are otherwise provided to the employee. If not feasible, the employee is entitled to take up to 30 additional minutes during each 4-hour period to express milk.

(B) If the employer is required by law or contract to provide the employee with paid rest periods, the employer will treat the rest periods used by the employee for expressing milk as paid rest periods, up to the amount of time the employer is required to provide as paid rest periods.

(C) If an employee takes unpaid rest periods, the employer may, but is not required to, allow the employee to work before or after her normal shift to make up the amount of time used during the unpaid rest periods.

(D) An employer may not require an employee to use paid leave time for unpaid meal and rest periods provided in compliance with these rules.

(b) As used in ORS 653.077 and these rules, “expression of breast milk” means the initiation of lactation by manual or mechanical means and does not include breastfeeding. However, any employer, whether or not covered by ORS 653.077 and these rules, may accommodate breastfeeding pursuant to its own policies or by agreement or contract with employees.

(2) An employer subject to ORS 653.077 will make a reasonable effort to provide the employee with a private location within close proximity to the employee’s work area to express breast milk.

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(a) As used in ORS 653.077 and this rule, a “private location” is a place, other than a public restroom or toilet stall, in close proximity to the employee’s work area for the employee to express breast milk without intrusion by other employees or the public and may include, but is not limited to:

(A) The employee’s work area if the work area permits the employee to express milk in private.

(B) A room connected to a public restroom, such as a lounge, if the room allows the employee to express milk in private.

(C) A child care facility where the employee can express milk in private.

(b) As used in ORS 653.077 and this rule, a “public restroom” is a restroom freely available for use by employees or the general public that does not include an attached lounge or room that allows an employee to express breast milk in private.

(c) As used in ORS 653.077 and this rule, “close proximity” means within walking distance from the employee’s work area that does not appreciably shorten the rest or meal period.

(d) If a private location is not within close proximity to the employee’s work area, the employer may not include the time taken to travel to and from the location as part of the break period.

(3) An employer is not required to provide rest periods under this section if to do so would impose an undue hardship on the operation of the employer’s business. As defined in ORS 653.077, “undue hardship” means significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer’s business.

(4) The employee who intends to express breast milk during work hours must give the employer reasonable oral or written notice of her intention, to allow the employer to make the preparations necessary for compliance with ORS 653.077 and these rules.

(5) The covered employer will notify all employees through its policies or other means, of the person or entity to whom the employee should give notice of intent to express breast milk. If the employer does not provide such notification, the employee’s notice to a supervisor or manager or to a human resource or personnel department or staff will be presumed reasonable.

(6) After receiving notice from the employee, the employer may take a reasonable time to make necessary preparations for compliance with ORS 653.077 and these rules. A “reasonable time” must not interfere with the rights provided by ORS

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653.077 and these rules, taking into consideration the immediacy of the employee's need to express breast milk, and that the rights under ORS 653.077 and these rules apply only until the employee's child is 18 months of age. For example, an employer in the process of creating a private space for expression of breast milk, must provide the most adequate space already available for an employee giving notice of an immediate need.

(7) An employer subject to ORS 654.077 will make available to the employee a means for storing breast milk that may include allowing the employee to store the milk in a refrigerator provided to employees or, if the employer does not provide a refrigerator for employee use, providing a place, if necessary, for storing the milk in a cooler or other insulated food container.

(8) ORS 653.077 and this rule apply to temporary employment agencies that employ 25 or more employees in Oregon for each working day during each of 20 or more calendar workweeks in the year in which the rest periods are to be taken or in the year immediately preceding the year in which the rest periods are to be taken.

(9) ORS 654.077 and these rules apply to individuals engaged in administrative, executive or professional work as described in ORS 653.020 (3).

(10) The provisions of this rule may be modified by the terms of a collective bargaining agreement if the collective bargaining agreement entered into by the employee includes provisions that prescribe rules pertaining to reasonable rest periods for the expression of breast milk.

(11) ORS 654.077 requires that each school district board adopt a policy to accommodate an employee who needs to express milk for her child.

(12) In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$1,000 against any person who intentionally violates ORS 653.077 or any rule adopted thereunder.

(13) The commissioner of the Bureau of Labor and Industries will appoint an advisory committee to facilitate compliance with ORS 653.077 and these rules. Upon request of a particular industry or profession, the advisory committee will determine when the ordinary course of such industry or profession makes compliance difficult for an employer in that industry or profession, and submit to the commissioner recommendations for rules to address compliance difficulties in that industry or profession.

Stat. Auth.: ORS 653.077(11)

Stats. Implemented: ORS 653.077