



For Immediate Distribution  
January 12, 2009

## **BOLI ALERT: Revised Meal & Rest Period Administrative Rule**

### **Overview of Revised Meal and Rest Period Rule (OAR 839-020-0050)**

The Bureau of Labor and Industries (BOLI) implemented a new administrative rule January 12, 2009, to update and clarify existing meal and rest period provisions. The revised rule requires the same basic 30-minute, unpaid meal period in which an employee is relieved of all duties (for shifts longer than 6 hours), but revises circumstances in which employers are not required to provide the full 30-minute meal period and/or relieve an employee completely from duty (i.e. the employee remains on-call).<sup>1</sup>

Under the revised rule an employer who does not provide an employee with a 30-minute meal period in which the employee is relieved of all duties must be able to demonstrate that:

1. Failure to provide a meal period was caused by unforeseeable equipment failures, acts of nature or other exceptional and unanticipated circumstances that only rarely and temporarily preclude the provision of a meal period;
2. Industry practice or custom has established a paid meal period of less than 30 minutes (but no less than 20 minutes) during which the employee is relieved of all duties; or
3. Providing a 30-minute, unpaid meal period where the employee is relieved of all duties would impose an undue hardship on the operation of the employer's business.

When an employer can demonstrate that providing an employee a meal period would impose an undue hardship on the operation of the business and does not provide the full 30-minute meal period, employees must still be provided with adequate time to consume a meal, to rest, and to use the restroom and must be paid for this time; this is in addition to all rest periods required by rule for the number of hours worked on any given shift. In addition, the employer must give notice to each employee affected by the undue hardship provision on a form prescribed by BOLI and maintain a record of that notice.

As used in the revised meal period rule, undue hardship means: "significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business." Determining an undue hardship would be dependent upon factors such as:

1. The employer's cost of complying with the requirement to provide a meal period;
2. The overall financial resources of the employer;
3. The number of persons employed at the particular worksite and their qualifications to relieve the employee; the total number of persons employed by the employer; and the number, type and geographic separateness of the employer's worksites; and
4. The effect providing the meal period would have on: the start-up or shutdown of machinery in continuous operation industrial processes; intermittent and unpredictable workflow not in the control of the employer or employee; the perishable nature of the materials used; and the safety and health of the employees, patients, clients, and the general public.

Employers can access more information about the revised meal and rest period rule on BOLI's website or by calling BOLI's Technical Assistance for Employers Program at 971-673-0824.

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<sup>1</sup> [Revised OAR 839-020-0050](#)



## **BOLI ALERT: Revised Meal & Rest Period Rule (cont.)**

### **Background on Meal and Rest Period Administrative Rules**

The Commissioner of BOLI has the authority to establish minimum conditions of employment, including minimum meal and rest periods, by administrative rule.<sup>2</sup> The major provisions of the Oregon meal and rest period rule date back to 1990 and require a basic 30-minute, unpaid meal period for every work period (six hours or greater) in which the employee is relieved of all duties. In addition, employers are required to provide paid rest periods of ten, uninterrupted minutes for every four-hour segment worked, “or major portion thereof” (more than two hours). Certain exceptions are provided in rule and statute:

- Rest periods are not required for employees 18 years of age or older, working less than five-hour shifts in retail or service establishments and working alone, as long as the employee is allowed to leave their station to use restroom facilities as necessary (OAR 839-020-0050 (6)(b));
- In 2002, the rule was amended to allow provisions in collective bargaining agreements to modify the meal and rest period requirements in the rule (OAR 839-020-0050 (7)); and
- Legislation passed in 2007 allows certain tipped food and beverage service employees to voluntarily waive meal periods (ORS 653.261(5) and OAR 839-020-0050 (8)).

### **Administrative Rule Prior to January 2009**

Prior to January 2009, the meal period rule did not require an employee to be relieved of all duties when “the nature or circumstances of the work prevent the employee from being relieved of all duty.”<sup>3</sup> BOLI has never interpreted the “nature or circumstances” exception to apply on an on-going or continuous basis, but the language of the rule did not specify this. This standard created confusion among some employers who maintained that certain job functions didn’t permit an employee to be “relieved of all duty” and that the nature of work necessitated their employees being on-call during a meal period. Employers in the construction, convenience store, trucking, manufacturing and other industries raised concerns that graveyard shifts, perishable materials, or continuous operations made total relief difficult or excessive expensive.

### **Recommendations of the Meal and Rest Period Advisory Group**

To provide clarity and an improved standard in meal and rest period provisions, Commissioner Avakian convened the Meal and Rest Period Advisory Committee (MARPAAC). The Commissioner charged the committee, which was comprised equally of business and labor representatives, with making a recommendation that balanced workers’ rights to adequate meal and rest periods with accommodating workplace conditions in which complete relief for an uninterrupted period of 30 minutes is not always feasible.

MARPAAC met during October and November 2008 and discussed circumstances in particular industries, such as construction, retail and health care, as it considered the rule and developed its recommendation. The committee’s final recommendation included provisions for alternate definitions of an “appropriate meal period” for specific employees under certain circumstances.<sup>4</sup> While MARPAAC did not reach consensus on one specific aspect of its final proposal, the committee agreed to the basic concepts and language proposed and to defer the unresolved issue to the Commissioner.<sup>5</sup>

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<sup>2</sup> [ORS 653.261\(1\)](#)

<sup>3</sup> [Administrative rule prior to January 12, 2009](#)

<sup>4</sup> [Rule proposal heard Nov. 17, 2008](#) (based on MARPAAC recommendations and language)

<sup>5</sup> [MARPAAC Recommendation to Commissioner Avakian](#)



**BOLI ALERT: Revised Meal & Rest Period Rule (cont.)**

The advisory committee recommendation, as finalized by the Commissioner, was put out for public comment and an administrative rule hearing was held on November 17, 2008. Substantial comment on the rule proposal was received and additional concerns were raised, both in regard to the protections it provided employees and the lack of flexibility provided to employers.

After careful review of the comments received and the concerns raised, the Commissioner implemented an “undue hardship” standard in the final rule to best address the concerns of both employers and employees. For situations in which providing a 30-minute period in which the employee is relieved of all duty isn’t feasible, the employer must be able to demonstrate an undue hardship, unforeseeable circumstances or industry practice. In doing so, the new rule offers both increased protections for employees and maintains flexibility for situations where total relief isn’t feasible. It also guarantees employees’ rights to adequate time to rest, consume a meal, and use the restroom when a full meal period is not provided, a protection not explicitly required under the former rule.