

Eat, Drink and Be Merry? Maybe Not Workers in the Food Service Industry

While you are out on the town enjoying a few drinks and dinner, your server may be working the path to increased riches.

A change in the law, effective January 1, 2008, allows food and beverage servers to waive their right to a work-free meal period thereby optimizing peak tip earning periods for them.

With the agreement of the employer, employees hired to serve food or beverages, who receive and report their tips, are now allowed to waive their regular meal periods. The employee must be at least 18 and must voluntarily request to waive their meal period, in writing, not sooner than 7 days of beginning work for the employer. This waiver is only available for tipped food and beverage servers; other restaurant employees such as cooks, bussers, and hosts or hostesses are not eligible.

There is a catch to the employer however. They must provide the employee with an opportunity to consume food during shifts of 6 hours or more, and they must pay the employee for all meal periods where the employee is not relieved from all duty. They also may not coerce the employee into waiving the meal period. Violators beware! Heavy penalties, as high as \$2000, can be assessed. If the violation continues, the penalties can add up very quickly, continuing at \$2,000 per day.

Sound simple? Well, maybe not. The law also requires the employee to make the request on a special Bureau of Labor and Industries form, WH164, which must be signed by both the employee and employer. The employer is also required to maintain special records and adhere to meal and break posting requirements.

A copy of the waiver is available on the BOLI web page under the menu at Wage and Hour, Current Topics, and click on "[Food Server Meal Period Waivers.](#)"

For more information on this and other important wage and hour topics, please plan to attend one of our new Wage and Hour Law seminars with updated information for 2008.

Upcoming seminars are scheduled for February 27 in Tillamook, February 29 and March 25 in Portland, March 6 in Roseburg, and March 26 in Salem. For registration information, visit www.oregon.gov/BOLI/TA or call Technical Assistance for Employers at 971 673-0824.