



August 7, 2023

Ms. Christina Stephenson
Commissioner, Oregon Bureau of Labor & Industries
800 NE Oregon St., Suite 1045
Portland, OR 97232

Re: Petition to Amend OAR 839-020-0050

Dear Commissioner Stephenson:

We are writing to request an amendment to OAR 839-020-0050. Oregon's current administrative rule pertaining to employee required meal and rest periods imposes timing requirements that do not reflect the needs and preferences of employees in most health care setting or the challenges of providing acute care in such a setting. We respectfully request that the Bureau consider and address the needs of health care workers and amend the timing rule to extend the applicable window and permit greater flexibility of the timing of meal periods in the challenging environment of a health care setting.

As required by ORS 183.390 and OAR 137-001-0070, accompanying this letter are a list of the names and addresses of Petitioner, the amendment to the rule Petitioner requests that the Bureau adopt, and the facts and arguments in support of the proposed amendment to the rule.

Additionally, Petitioner is separately submitting comments, emails and requests from Petitioner's employees regarding the challenges and issues of the existing rule, and in support of amending the existing rule and this Petition.

We appreciate you considering this request and the needs of healthcare workers in this situation.

Sincerely,

Jason Schibel
Vice President, Human Resources
Legacy Health
jschibel@lhs.org

BEFORE THE OREGON BUREAU OF LABOR AND INDUSTRIES
Petition to Amend OAR 839-020-0050(2)(d) Relating to the Timing of Meal Periods

August 8, 2023

Pursuant to ORS 183.390, OAR 137-001-0070, and OAR 839-002-0001 et seq., and the following supporting facts and arguments, we petition the Oregon Bureau of Labor & Industries (“BOLI” or “the Agency”) to amend OAR 839-020-0050(2)(d) relating to the timing of meal periods for shifts longer than ten hours in a health care setting. Petitioner Legacy Health has signed on behalf of all co-petitioners.

As per OAR 137-001-0070(1), petitioners are:

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Legacy Good Samaritan Hospital and Medical Center
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I. PROPOSED RULE LANGUAGE

We propose the following language to amend OAR 839-020-0050(2)(d). The language underlined and in red reflects the proposed amendment:

(d) Timing of the meal period: If the work period is seven hours or less, the meal period is to be taken after the conclusion of the second hour worked and completed prior to the commencement of the fifth hour worked. If the work period is more than seven hours but fewer than ten hours, the meal period is to be taken after the conclusion of the third hour worked and completed prior to the commencement of the sixth hour worked. If working in an acute-care inpatient facility and the work period is ten or more hours, the meal period is to be taken after the conclusion of the third hour worked and completed prior to the conclusion of the ninth hour worked.

II. FACTS AND ARGUMENTS

Employees in acute care settings at in-patient facilities primarily work twelve hour shifts, with some working ten hour shifts, and fewer in regular eight hour shifts. The existing timing requirements of OAR 839-020-0050 do not align with the health and safety needs of health care employees, or with their stated preferences.¹

By way of example, an employee who begins her shift at 7 a.m. (a standard hour for twelve-hour shifts) is required to begin her meal period after 10 a.m. and complete it prior to 1 p.m. These same requirements apply to the other caregivers on her unit and shift, such that in order to ensure that everyone takes their meal period within the allotted time, many people must take their lunches barely three hours after they started working and, more to the point, barely three hours after they ate breakfast. In addition, taking a meal period early in the shift means that employees then work the balance of their shifts – between eight and nine remaining hours - with only ten minute breaks.

In addition, the timing of meal periods does not align with the provision of health care in an in-patient setting. Doctors conduct their rounds in the early morning hours, and submit their orders at that time. Patients arrive in the early morning for scheduled procedures, and patients are discharged in the morning as well. Accordingly, the limited 3-hour window for meal periods does not align with the busy periods in an in-patient facility. And, finally, in-patient facilities must incorporate the unpredictable nature of health care services; even if meal periods are scheduled and staggered, an unexpected arrival (a stroke, a car accident, a shooting) which

¹ OAR 839-020-0050 contains an exception which permits modifications of the rule “by the terms of a collective bargaining agreement if the provisions of the collective bargaining agreement entered not by the employees specifically prescribe rules concerning meal periods and rest periods.” OAR 839-020-0050(7).

requires significant staff presence and attention can result in disruption to the limited window allocated for meal periods.

These same issues exist for the shifts which begin at 7 p.m. An employee who begins his shift at 7 p.m. has little if any interest in another meal period at 10 p.m. And, as with his colleague who works the day shift, the existing time window for a meal period does not align with caregiving needs. In the case of those shifts beginning at 7 p.m., the early evening hours are when patients are getting settled for the night, requiring medications and other care prior to going to sleep.

Solutions such as staggered shifts or staggered start times to spread out the time periods across a unit or department are, unfortunately, not only unworkable in an inpatient setting but demonstrably dangerous. Each shift change requires a "hand-off" which entails the exchange of information regarding each patient; increasing the number of hand-offs dramatically increases the possibility of errors and omissions that negatively impact patients.

Finally, it is important to note that the 10- and 12-hour shifts are not unique to petitioners; these shifts are uniform and consistent across this industry, reflecting best practices not only for employee health and safety, but for patient health and safety.

Our employees on 10- and 12- hour shifts have made their preferences and desires abundantly clear: the existing time period begins too early and does not extend long enough. In imposing the limited window on our employees, management routinely and frequently meets significant resistance: our employees simply do not want to take their meal periods within the time frame established by a rule which was promulgated for eight-hour shifts and which did not contemplate or sufficiently incorporate shifts of longer length.

III. PROPOSITIONS OF LAW

As required by OAR 137.001-0070(1)(c), petitioners state that under ORS 183.335, OAR 839-002-0001 and OAR 839-002-0002, BOLI is authorized to develop administrative rules for the implementation and enforcement of the wage and hour statutes, including but not limited to the meal and rest period statutes and regulations.

IV. CONCLUSION

The time periods currently imposed on shifts greater than ten hours by OAR 839-020-0050 do not reflect or advance the best interests or preferences of health care workers or the provision of health care in Oregon. Amending the language of the rule to provide a longer window of time and greater flexibility in the timing of meal period for health care workers would uphold BOLI's obligation to advance and protect the interests of Oregon workers and result in meaningful benefits to healthcare workers in Oregon. We strongly urge BOLI to exercise its rulemaking authority and revise OAR 839-020-0050 as proposed by this petition.