

BEFORE THE COMMISSIONER  
OF THE  
BUREAU OF LABOR AND INDUSTRIES

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

STATEMENT OF OBJECTIVE

Relating to the provision of rest and meal periods to employees.

**OAR 839-020-0050**

**Background**

**ORS 653.261** provides:

**Minimum employment conditions; overtime; rules; meal periods; exemptions.** (1) The Commissioner of the Bureau of Labor and Industries may adopt rules prescribing such minimum conditions of employment, excluding minimum wages, in any occupation **as may be necessary for the preservation of the health of employees. The rules may include, but are not limited to, minimum meal periods and rest periods...**

Emphasis added.

Since 1990, OAR 839-020-0050, "Meal and Rest Periods," has included this language:

(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 circumstances** of the work prevent the employee from being relieved from all duty....

Emphasis added.

The Bureau of Labor and Industry's (bureau's) interpretation of the rule has consistently been that the "nature or circumstances" subsection applies only in exceptional and unanticipated circumstances. However, it came to the bureau's attention through a documented history of complaints (some still pending) from workers that the interpretation by some employers is that the subject phrase "nature or circumstances" always allows employers to require employees to perform duties or remain on call during meal periods in certain types of businesses.

To eliminate ambiguities in the current rule that make enforcement and compliance difficult, and to prevent continuing disagreement and confusion, in July 2008 the bureau amended OAR 839-020-0050 to clarify the bureau's interpretation of the phrase "nature or circumstances." Additionally, the bureau repealed a section of the rule allowing a paid meal period of less than 30 minutes if to do so was standard industry practice or custom. Only one public comment to the proposed rule amendments had been received prior to the amendments becoming final; however soon after the rule was amended, employers and their representatives contacted the bureau with concerns. Some employees and a labor union raised concerns as well. Subsequently, the commissioner of the bureau agreed to replace the new rule with a temporary rule restoring the language of the previous rule and to convene an advisory committee (Meal and Rest Period Advisory Committee or MARPAC) to propose language for a permanent rule. The bureau filed a Notice of Rulemaking Hearing with the Secretary of State on October 15, 2008. After MARPAC sent proposed permanent rule language to the Commissioner, the bureau filed an Amended Notice of Rulemaking Hearing with the Secretary of State on November 4, 2008. A public hearing was held on the proposed rule on November 17, 2008. The final rules were filed with the Secretary of State and became effective on January 12, 2009, except for an employee notice requirement that becomes effective on March 16, 2009.

### **Objective of this Rulemaking**

The objective of this rulemaking is to provide sufficient clarity within the language of the rule that employees and employers can reasonably be expected to understand what the required meal and rest periods are, and to provide strong protection for the health, safety and welfare of employees while ensuring the productivity of workplaces.

### **The Issue from Employees' Perspective**

ORS 653.261 provides that the commissioner may adopt such rules prescribing minimum conditions of employment, including rest and meal periods, as may be necessary for the preservation of the health of employees.

The U.S. Department of Labor (USDOL) states that rest and meal periods "promote the efficiency of the employee." Rest periods increase productivity by allowing employees to recharge and refocus. Safety experts see rest periods as a useful tool in preventing injury on the job. In addition, extended or unusual shift periods may cause physical, mental and

emotional stress, and rest periods help guard against fatigue, stress or a lack of concentration, potentially leading to operator errors, injuries and accidents.<sup>1</sup>

The right to stop work for a short coffee break or to use the restroom may be available to workers who are professionals or executives.<sup>2</sup> However, provision of rest and meal periods is especially important to the health of workers who may not work indoors or at a fixed station, or who cannot control the flow or speed of their work, or whose duties do not normally provide opportunities to sit down or consume food with clean hands or in a relaxed manner.

### **The Issue from Employers' Perspective**

In the United States, between 1979 and 1993, the number of employees who did not receive paid rest periods increased, up to 47%. The toll of this trend affects both employees and employers. Rest and meal periods increase efficiency of workers. The physical and psychological fatigue of work without a break generally creates a slow down in productivity. A short rest period or meal period, with the added benefit of refueling with calories, reinvigorates employees and efficiency is therefore increased. Rest and meal periods decrease work place injury. Studies show that frequent breaks decrease the risk of physical injury in occupations as varied as manufacturing, service and retail jobs, such as cashiering, and computer terminal work. Rest and meal periods increase worker satisfaction.<sup>3</sup>

### **The Final Rule**

The bureau is aware, and the MARPAC proceedings and public hearing confirmed, that there exists tremendous diversity of workplace settings and conditions, and disparity in the relative size and resources of employers. Therefore the final rule provides an exception when an employer can show that providing employees with a 30 minute paid uninterrupted meal period would be an undue hardship. Undue hardship may be established by the employer's financial and economic circumstances, number of employees, effect of meal periods on worksite operations, or a combination of factors. The rules set out alternative rest and meal period requirements under those circumstances. In addition, the industry practice or custom exception is maintained in the final rule, as well as an exception for an employer's failure to provide meal periods under unforeseeable, exceptional, rare and temporary circumstances.

### **How the Agency will Determine whether the Rules Accomplish the Objective**

The bureau will determine the effectiveness of the proposed rule by looking at three measures:

---

<sup>1</sup> *Employee Rest Breaks: What's Required?* Beth Gaudio, National Federation of Independent Business Legal Foundation, January 1, 2007.

<sup>2</sup> *Give us a Break!*, Laura Sido, Richmond (VA) Indy Media Center, November 22, 2004.

<sup>3</sup> *Employee Rest Breaks: What's Required?* Beth Gaudio, National Federation of Independent Business Legal Foundation, January 1, 2007.

1. After employer implementation of the new rule, a decrease in the number of complaints filed with the bureau's Wage and Hour Division that allege violations of the meal and rest period rules. A significant, sustained decrease could be a substantial indication that employers understand and are in compliance with the meal and rest period requirements stated in the final rule and that employees are receiving meal and rest periods.
2. A decrease in the number of inquiries to the bureau's Technical Assistance for Employers Program regarding required meal and rest periods. A significant, sustained decrease could be a substantial indication that employers understand and are in compliance with the meal and rest period requirements stated in the final rule.

*Marcia Ohlemiller*

---

Marcia Ohlemiller  
Rules Coordinator  
Bureau of Labor and Industries  
January 12, 2009