

BEFORE THE COMMISSIONER  
OF THE  
BUREAU OF LABOR AND INDUSTRIES

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

**839-020-0050**  
**Meal and Rest Periods**

*[(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.*

*(C) Where the employer can show that industry practice or custom has established a paid meal period of less than 30 minutes (but no less than 20 minutes) during which employees are*

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*relieved of all duty, such industry practice or custom will satisfy the meal period provisions of section (1) of this rule.*

*(b) "Appropriate rest period" means: A period of rest of not less than ten minutes for every segment of four hours or major part thereof worked in one work period without deduction from the employee's pay. The period of rest must be in addition to and taken separately from the time allowed for the usual meal period. Insofar as feasible, considering the nature and circumstances of the work, such period of rest is to be taken by an employee approximately in the middle of each four hour (or major part thereof) segment. The rest period is not to be added to the usual meal period or deducted from the beginning or end of the work period to reduce the overall length of the total work period.*

*(A) The provisions of section (1) of this rule regarding appropriate rest periods do not apply when all of the following conditions are met:*

*(a) The employee is 18 years of age or older; and*

*(b) The employee works less than five hours in any period of 16 continuous hours; and*

*(c) The employee is working alone; and*

*(d) The employee is employed in a retail or service establishment, i.e., a place where goods and services are sold to the general public, not for resale; and*

*(e) The employee is allowed to leave the employee's assigned station when the employee must use the restroom facilities.*

*(2) In the absence of regularly scheduled meal periods and rest periods, it will be sufficient compliance with section (1) of this rule when the employer can show that the employee has, in fact, received the time specified. This is permitted only in those cases where the employer*

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*can show that the ordinary nature and circumstances of the work prevent the employer from establishing and maintaining a regularly scheduled meal period and rest period.*

*(3) For the purposes of 839-020-0050, factors to be considered in determining the nature or circumstances of work which prevent an employee being relieved of all duties or the scheduling of regular meal and rest periods may include, but are not limited to, the following: The safety and health of employees, patients, clients, and the public; availability of other employees to provide relief; qualifications (or lack thereof) of those available to provide relief; costs involved in the shutdown/startup of machinery in continuous-operation industrial processes; intermittent and unpredictable work flow not in the control of the employer/employee; unforeseeable equipment failures, emergencies, acts of nature.*

*(4) As used in this rule, "work period" means the period between the time the employee begins work and the time the employee ends work, and includes rest periods, and any period of one hour or less (not designated as a meal period) during which the employee is relieved of all duties. Meal periods are not included as part of the work period unless the employee continues to perform duties during the meal period.*

*(5) The provisions of this section regarding appropriate meal periods and rest periods may be modified by the terms of a collective bargaining agreement if the provisions of the collective bargaining agreement entered into by the employees specifically prescribe rules concerning meal periods and rest periods.*

**(6)](1) As used in this rule:**

**(a) "Appropriate meal period" means any of the following:**

**(A) A meal period of not less than 30 consecutive, uninterrupted minutes during**

**which the employee is relieved of all duties. If an employee does not receive such a meal**

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period, the employer shall count the meal period as work time and pay the employee for the entire period.

(B) A paid meal period during which exceptional and unanticipated circumstances prevent the employee from being relieved of all duties, but during which the employee is permitted to eat while continuing to perform duties or remain on call. Factors to consider when determining if exceptional and unanticipated circumstances exist include, but are not limited to, unanticipated absences of scheduled employees, unforeseeable equipment failures, emergencies, acts of nature, or imminent and adverse weather conditions.

(C) A meal period of not less than 30 minutes of uninterrupted time during which the employee may be on call but is not required or usually called upon to perform duties.

This paragraph only applies if:

(i) The employee is the only employee present at a worksite location or no other qualified employee as defined in subsection (c) is available to relieve the employee for a meal period. For purposes of this subparagraph, “employee” includes a sole proprietor or a partner in a partnership;

(ii) The 30 minutes of time typically occurs during the periods required in section (2) of this rule;

(iii) The 30 minutes of time is in addition to the rest periods required in section (5) of this rule;

(iv) The 30 minutes of time is paid work time;

(v) The employee is not required to work longer than eight hours without receiving a 30-minute meal period during which the employee is relieved of all duties; and

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(vi) The employer posts a notice provided by the Commissioner of the Bureau of Labor and Industries regarding rest and meal periods in a conspicuous and accessible place where all employees can view it. Notices that comply with this rule are available upon request from the bureau.

(D) The equivalent of 30 minutes of uninterrupted time in periods of at least ten (10) consecutive minutes of time during which the employee may be on call in a retail or service establishment. This paragraph applies only if:

(i) The employee is the only employee present at a worksite location or no other qualified employee as defined in subsection (c) is available to relieve the employee for a meal period. For purposes of this subparagraph, “employee” includes a sole proprietor or a partner in a partnership;

(ii) The 30 minutes of time typically occurs during the periods required in section (2) of this rule;

(iii) The 30 minutes of time is in addition to the rest periods required in section (5) of this rule;

(iv) The 30 minutes of time is paid work time;

(v) The employee is not required to work longer than eight hours without receiving a 30-minute meal period during which the employee is relieved of all duties; and

(vi) The employer posts a notice provided by the Commissioner of the Bureau of Labor and Industries regarding rest and meal periods in a conspicuous and accessible place where all employees can view it. Notices that comply with this rule are available upon request from the bureau.

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(E) A paid meal period of no less than 20 minutes during which the employee is relieved of all duties. This paragraph applies only if the employer can show that industry practice or custom has established such a meal period.

(b) "Appropriate rest period" means a period of rest of not less than ten minutes for every segment of four hours or major part thereof worked in one work period without deduction from the employee's pay.

(c) "No other qualified employee is available" means one of the following circumstances:

(A) No other employee present at the worksite location has the requisite specialized training to perform the duties of the job, e.g., required certification, and it would impose an undue hardship on the employer to provide the requisite specialized training to another employee.

(B) No other employee present at the worksite can leave their work station in order to relieve the employee for a meal period, because each employee works at a distinct work station that cannot be closed for 30 consecutive minutes without imposing an undue hardship on the employer.

(d)(A) "Work period" means the period between the time the employee begins work and the time the employee ends work.

(B) "Work period" includes a rest period, and any period of one hour or less (not designated as a meal period) during which the employee is relieved of all duties.

(C) "Work period" does not include an appropriate meal period unless the meal period is paid work time or the employee continues to perform duties during the meal period.

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**(2)(a) Except as provided in sections (3), (4), (7) and (8) of this rule, an employer shall provide an appropriate meal period to an employee.**

**(b) When the employee's work period is six hours or more, up to seven hours, the employer shall provide the employee the appropriate meal period between the second and fifth hours of work.**

**(c) When the employee's work period is seven hours or more, up to and including eight hours, the employer shall provide the employee the appropriate meal period between the third and sixth hours of work.**

**(3) An employer is not required to provide an appropriate meal period to an employee when the employee works a work period of less than six hours.**

**(4)(a)** Pursuant to the provisions of ORS 653.261(5), if an employer agrees, an employee may waive a meal period if all of the following conditions are met:

[(a)]**(A)** The employee is employed to serve food or beverages, receives tips, and reports the tips to the employee's employer;

[(b)]**(B)** The employee is at least 18 years of age;

[(c)]**(C)** The employee voluntarily requests to waive the employee's meal periods no less than seven calendar days after beginning employment;

[(d)]**(D)** The employee's request to waive the employee's meal periods is in writing **in the language used by the employer to communicate with the employee, on a form provided by the commissioner,** and is signed and dated by both the employee and employer;

[(e)]**(E)** The employer retains and keeps available to the commissioner a copy of the employee's request to waive the employee's meal period during the duration of the employee's employment and for no less than six months after the termination date of the employee;

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[(f)]**(F)** The employee is provided with a reasonable opportunity to consume food during any [workshift]**work period** of six hours or more while continuing to work;

[(g)]**(G)** The employee is paid for any and all meal periods [in ]**during** which the employee is not completely relieved of all [duty]**duties**;

[(h)]**(H)** The employee is not required to work longer than eight hours without receiving a 30-minute meal period [in ]**during** which the employee is relieved of all [duty]**duties**;

[(i)]**(I)** The employer makes and keeps available to the commissioner accurate records of hours worked by each employee [which ]**that** clearly indicate whether or not the employee has received [a ]meal periods; and

[(j)]**(J)** The employer posts a notice provided by the commissioner regarding rest and meal periods in a conspicuous and accessible place where all employees can view it. [ *Notices that comply with this rule are available upon request from the Bureau of Labor and Industries.* ]

[(7) *The written request to waive the employee's meal periods referred to in subsection (6)(d) of this rule must be made using a form provided by the commissioner in the language used by the employer to communicate with the employee. Written request forms that comply with this rule are available upon request from the Bureau of Labor and Industries.* ]

[(8)]**(b)** Either the employer or employee may revoke the agreement for the employee to waive the employee's meal periods by providing at least seven (7) calendar days written notice to the other.

[(9)]**(c)** Notwithstanding [the provisions of section (9)]**subsection (b) of this section**, an employee who has requested to waive meal periods [pursuant to sections (7) and (8) of this rule ]**under this section** may request to take a meal period without revoking the agreement to waive

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such periods. [*Such requests*]**The request to take a meal period** must be submitted in writing to the [*employee's*] employer no less than 24 hours prior to the meal period[(s)] requested.

[(10)]**(d)** An employer may not coerce an employee into waiving [*a*] meal periods.

[(11)]**(e)** An employer will be considered to have coerced an employee into waiving the employee's meal periods under the following circumstances:

[(a)]**(A)** The employer requests or requires an employee to sign a request to waive meal periods;

[(b)]**(B)** An employee is required to waive meal periods as a condition of employment at the time of hire or at any time while employed;

[(c)]**(C)** The employer requests or requires any person, including another employee, to request or require [*an*] **the** employee to waive meal periods; or

[(d)]**(D)** The employee signs a form requesting to waive meal periods prior to being employed for seven calendar days[;].

**(f) Written request forms and notices regarding rest and meal periods that comply with this section are available upon request from the bureau.**

**(5)(a) Except as provided in sections (6), (7) and (8) of this rule, an employer shall provide an appropriate rest period to an employee.**

**(b) The employer shall provide the appropriate rest period in addition to, and taken separately from time provided for an appropriate meal period.**

**(c) Insofar as feasible, considering the ordinary nature of the work, the employer shall provide the appropriate rest period approximately in the middle of each segment of four hours or major part thereof worked in a work period.**

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(d) An employer may not require or allow an employee to add the appropriate rest period to a meal period or deduct the appropriate rest period from the beginning or end of the employee's work period to reduce the overall length of the work period.

(6) An employer is not required to provide an appropriate rest period to an employee when all of the following conditions are met:

(a) The employee is 18 years of age or older;

(b) The employee is working alone;

(c) The employee works less than five hours in any period of 16 consecutive hours;

(d) The employee is employed in a retail or service establishment, i.e., a place where goods and services are sold to the general public, not for resale; and

(e) The employee is allowed to leave the employee's assigned station when the employee must use the restroom facilities.

(7) The provisions of this rule regarding appropriate meal periods and appropriate rest periods may be modified by the terms of a collective bargaining agreement if the provisions of the collective bargaining agreement entered into by the employees specifically prescribe rules concerning meal periods and rest periods.

[(13)](8) Minors under the age of 18 are not subject to this rule. Rest and meal period requirements for minors under 18 years of age are provided in OAR 839-021-0072.

G:\boli\emt\Meal and Rest Periods Rules Advisory Committee\Proposed Rule (November 4, 2008)

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