TECHNICAL ASSISTANCE FOR EMPLOYERS

BREAKS IN THE WORKPLACE
TECHNICAL ASSISTANCE FOR EMPLOYERS

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TECHNICAL ASSISTANCE FOR EMPLOYERS

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REST BREAKS

• Federal law says rest breaks are given with pay and count as work time. 29 C.F.R. § 785.18

• State law says adults get 10 continuous minutes of paid break time for every 4 hours, or major portion thereof, worked in each work period during which the employee is relieved of all duty ORS 653.261, OAR 839-020-0050(6)(a)

• Failure to provide adequate meal or rest periods carries a maximum penalty of $1,000 per violation – OAR 839-020-1010,1020
REST BREAKS
TIMING

• Employers must provide the rest period approximately in the middle of each segment of four hours
• Rest breaks are given in addition to meal periods; it is prohibited for an employer to allow employees to add rest periods to a meal period or to deduct them from the beginning or the end of the employees shift
• The employer has the burden to show they provided appropriate rest periods
REST BREAKS

• “Work period” is the period between the time the employee begins work and the time the employee ends work and includes rest periods (meal periods are excluded).

• Collective Bargaining Agreement - Meal periods and rest periods may be modified by a CBA if the provisions specifically prescribe rules concerning meal and rest periods.
## Rest Breaks Required for Work Periods of Up to 24 hours:

<table>
<thead>
<tr>
<th>Length of work period</th>
<th>Number of rest breaks required</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 hrs or less</td>
<td>0</td>
</tr>
<tr>
<td>2 hrs 1 min - 5 hrs 59 min</td>
<td>1</td>
</tr>
<tr>
<td>6 hrs</td>
<td>1</td>
</tr>
<tr>
<td>6 hrs 1 min - 10 hrs</td>
<td>2</td>
</tr>
<tr>
<td>10 hrs 1 min - 13 hrs 59 min</td>
<td>3</td>
</tr>
<tr>
<td>14 hrs</td>
<td>3</td>
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<tr>
<td>14 hrs 1 min - 18 hrs</td>
<td>4</td>
</tr>
<tr>
<td>18 hrs 1 min - 21 hrs 59 min</td>
<td>5</td>
</tr>
<tr>
<td>22 hrs</td>
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<td>6</td>
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REST BREAKS
RETAIL / SERVICE EXEMPTION

Rest periods are not required when:
• Employee works in retail or a service establishment;
• Employee is 18 or older;
• Employee works less than 5 hours in any continuous 16 hour period;
• Employee is on duty alone; and
• Employee may leave the work station to use the restroom when necessary.

OAR 839-020-0050 (6)(b)
MEAL PERIODS

Federal law stipulates *bona fide* meal periods are not work time and are given without pay provided:

- The employee is (must be) completely relieved of all duty,
- The meal period is 30 minutes or more in duration
- Employer need not allow employee to leave premises
- 29 C.F.R. § 785.19
MEAL PERIODS & TIMING

State law allows / requires uninterrupted meal periods of 30 minutes or more without pay
• Not required on shifts less than 6 hours
• 6 to 7 hour shifts meals should taken after the conclusion of the 2\textsuperscript{nd} hour and completed prior to the commencement of the 5\textsuperscript{th} hour worked
• Shifts of 7+ hours meals should be taken after the conclusion of the 3\textsuperscript{rd} hour and completed prior to the commencement of the 6\textsuperscript{th} hour worked.

ORS 653.261, OAR 839-020-0050(1)(c)
Meal Periods Required for Work Periods of Up to 24 hours:

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EXCEPTIONS

Employers that do not provide a meal period as stipulated under OAR 839-020-0050 have the burden to show that:

1. The failure to provide the meal period was caused by unforeseeable equipment failures, acts of nature or exceptional and unanticipated circumstances, or

2. [Industry practice has established a paid meal period of not less that 20 minutes,] or

3. To provide the required meal period would pose an “undue hardship” on the operation of the employers business
MEAL PERIODS
“UNDUE HARDSHIP”

“Undue hardship” means a significant difficulty or expense when considered in relation to:

• The size of the employer’s business,
• The financial resources of the employer’s business,
• The nature of the employer’s business, or
• The structure of the employer’s business

OAR 839-020-0050(4)
MEAL PERIODS
“UNDUE HARDSHIP”

To determine whether providing a meal period requires significant difficulty or expense, the following factors will be considered:

• The cost of providing an uninterrupted meal period,
• The overall financial resources of the employer
• The number of people employed at the worksite
• Their qualifications to relieve the employee,
• The total number of employees employed,
• The number of worksites, and
MEAL PERIODS
“UNDUE HARDSHIP”

• The type of worksites,
• The geographic separateness of the worksites
• Startup or shutdown of machines in continuous operation processes intermittent and unpredictable workflow not within control of employer or employee,
• The perishable nature of materials used on the job, and
• The safety and health of employees, patients, clients or the public
MEAL PERIODS
“UNDUE HARDSHIP”

When an employer is unable to provide a meal period due to bona fide “undue hardship,” the employer shall instead provide the employee:

• Adequate periods in which the employee may rest, consume a meal and use the restroom;
• Without deduction from the employee’s pay; and
• Provide a notice to each employee of their meal and rest period rights in the language the employer uses to communicate with their employees; and
• The employer must keep a copy of the notice provided for at least 6 months after the employee leaves the employers employ.
• A non exempt employee refuses to take their rest breaks. They tell you they don’t want to lose their flow. You’ve talked with them before but they continue to skip their rest break.

• What do you do next?
• It is their choice to skip right?
• How do you document these conversations?
## REST PERIODS
### EXPRESSION OF MILK

<table>
<thead>
<tr>
<th>Oregon Law</th>
<th>Federal Law</th>
</tr>
</thead>
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<tr>
<td>• All employers with 25 or more employees</td>
<td>• All employers covered by the FLSA</td>
</tr>
<tr>
<td>• All non-exempt employees as well as “white collar” salaried exempt employees are eligible</td>
<td>• All employees not exempt from the provisions of Section 207 (maximum hours) of the FLSA are eligible</td>
</tr>
<tr>
<td>• 30 minute break for each four-hour segment (or major portion of a four-hour segment) of the work period</td>
<td>• A break “each time an employee has need to express milk” for “a reasonable time,” which could exceed the 30 minutes required by state law</td>
</tr>
</tbody>
</table>
REST PERIODS
EXPRESSION OF MILK

**Oregon Law**
- Employers need not provide rest breaks for the expression of milk if doing so would impose an “undue hardship”
- Requires accommodations for the mother of a child 18 months of age or younger

**Federal Law**
- Federal law only allows an undue hardship exemption for employers of less then 50 employees
- Requires accommodations for the mother of a child 1 year of age or younger
REST PERIODS
EXPRESSION OF MILK

ORS 653.077 – requires employers to provide a “reasonable rest period” for employee to express milk for her child 18 months of age or younger

- Under state law “reasonable rest period” is no less than 30 minutes during each 4-hour, or major part of 4-hour work period, to be taken approximately in the middle of each work period. OAR 839-020-0051(2)(a)
REST PERIODS
EXPRESSION OF MILK

• The employer may allow the employee to make up unpaid time before the start of, or at the end of their regular shift.

• Employer may not require employee to substitute paid leave for unpaid rest period.
REST PERIODS
EXPRESSION OF MILK

Employer must make reasonable effort to provide private (concealed from view/without intrusion) location, other than a public restroom or toilet stall, within close proximity to employees work station for expression of milk.
QUESTIONS?
THANK YOU

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