

BOLI Clarifies Meal and Rest Break Rules

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OAR 839-020-0050(1) requires an employer to provide appropriate meal and rest periods during which the employee is relieved of all duties. Effective July 8, 2008, the Oregon Bureau of Labor and Industries (BOLI) modified this rule in two significant ways. The rule as modified provides that:

- Employees must be relieved of all duties during meal periods except in narrow situations where the employer can show that exceptional and unanticipated circumstances prevent the employee from being relieved of all duties.
- The inability of the employer to provide regularly scheduled meal and rest periods must be based on the ordinary nature of the work the employee performs.

OAR 839-020-0050(1) requires an employer to provide appropriate meal and rest periods during which the employee is relieved of all duties. The language of the rule being modified contained exceptions to the general requirement to provide meal and rest breaks. Under the old exceptions, employers could avoid providing regularly scheduled meal and rest periods, and could avoid providing meal breaks in which the employee is not relieved from his/her duties, where "the nature or circumstances" of the work or "industry practice or custom" prevented the employee from being relieved of all duty during his or her meal and rest periods. These exceptions have been clarified and narrowed, as discussed below.

Relieved of All Duties Exception—Exceptional and Unanticipated Circumstances

BOLI's modified rule allows an exception to the requirement that the employee is relieved of all duties during meal breaks "only in those cases where the employer can show that *exceptional and unanticipated circumstances* of the work prevent the employee from being relieved from all duty." OAR 839-020-0050 (1)(a)(B) (emphasis added).

Moreover, BOLI provides a non-exhaustive list of examples of the kinds of exceptional and unanticipated circumstances of the work that may prevent an employee from being relieved of all duty during his/her meal period: "Unanticipated absences of scheduled employees; unforeseeable equipment failures; emergencies; acts of nature; or imminent and unanticipated adverse weather conditions." OAR 839-020-0050(4).

Regularly Scheduled Meal or Rest Period Exception—Ordinary Nature of Work

Further, under the modified rule, the exception to the requirement that the employer is required to provide regularly scheduled meal and rest breaks applies only in situations where the "ordinary nature of the work ... prevent[s] an employee from receiving regularly scheduled meal and rest periods."

BOLI again provides a non-exhaustive list of examples of the factors to consider in determining the "ordinary nature of work which prevent an employee from receiving regularly scheduled meal and rest periods." These examples include: "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; or intermittent and unpredictable work flow not in the control of the employer/employee." OAR 839-020-0050(3).

Note that the modified rule does not include several factors (e.g., unforeseeable equipment failures, emergencies, and acts of nature) that formerly were listed with the "ordinary nature of work" exception. Instead, those factors have been added to the factors that may be considered when determining whether there are exceptional and unanticipated circumstances of the work that would prevent an employee from being relieved of all duties during the meal period.

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