

A-Engrossed
Senate Bill 403

Ordered by the Senate March 23
Including Senate Amendments dated March 23

Sponsored by COMMITTEE ON RULES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Permits employee who serves food or beverages, receives tips and reports tips to employer to waive meal period. Prohibits employer from coercing employee into waiving meal period. Imposes civil penalty for violation.

Sunsets January 2, 2012.

A BILL FOR AN ACT

1
2 Relating to meal periods for tipped employees; creating new provisions; and amending ORS 653.261.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 653.261 is amended to read:

5 653.261. (1) The Commissioner of the Bureau of Labor and Industries may [*issue*] **adopt** rules
6 prescribing such minimum conditions of employment, excluding minimum wages, in any occupation
7 as may be necessary for the preservation of the health of employees. [*Such*] **The** rules may include,
8 but are not limited to, minimum meal periods and rest periods, and maximum hours of work, but not
9 less than eight hours per day or 40 hours per week; however, after 40 hours of work in one week
10 overtime may be paid, but in no case at a rate higher than one and one-half times the regular rate
11 of pay of [*such*] **the** employees when computed without benefit of commissions, overrides, spiffs and
12 similar benefits.

13 (2) Nothing contained in ORS 653.010 to 653.261 shall be construed to confer authority upon the
14 commissioner to regulate the hours of employment of employees engaged in production, harvesting,
15 packing, curing, canning, freezing or drying any variety of agricultural crops, livestock, poultry or
16 fish.

17 (3) Rules [*promulgated*] **adopted** by the commissioner pursuant to subsection (1) of this section
18 do not apply to individuals employed by this state or a political subdivision or quasi-municipal cor-
19 poration thereof if other provisions of law or collective bargaining agreements prescribe rules per-
20 taining to conditions of employment referred to in subsection (1) of this section, including meal
21 periods, rest periods, maximum hours of work and overtime.

22 (4) Rules [*promulgated*] **adopted** by the commissioner pursuant to subsection (1) of this section
23 regarding meal periods and rest periods do not apply to nurses who provide acute care in hospital
24 settings if provisions of collective bargaining agreements entered into by the nurses prescribe rules
25 concerning meal periods and rest periods.

26 **(5)(a) The commissioner shall adopt rules regarding meal periods for employees who**
27 **serve food or beverages, receive tips and report the tips to the employer.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 **(b) In rules adopted by the commissioner under paragraph (a) of this subsection, the**
2 **commissioner shall permit an employee to waive a meal period. However, an employer may**
3 **not coerce an employee into waiving a meal period.**

4 **(c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the**
5 **commissioner may assess a civil penalty not to exceed \$2,000 against an employer that the**
6 **commissioner finds has coerced an employee into waiving a meal period in violation of this**
7 **subsection. Each violation is a separate and distinct offense. In the case of a continuing vi-**
8 **olation, each day's continuance is a separate and distinct violation.**

9 **(d) Civil penalties authorized by this subsection shall be imposed in the manner provided**
10 **in ORS 183.745. All sums collected as penalties under this subsection shall be applied and paid**
11 **over as provided in ORS 653.256 (3).**

12 **SECTION 2.** ORS 653.261, as amended by section 1 of this 2007 Act, is amended to read:

13 653.261. (1) The Commissioner of the Bureau of Labor and Industries may adopt rules prescrib-
14 ing such minimum conditions of employment, excluding minimum wages, in any occupation as may
15 be necessary for the preservation of the health of employees. The rules may include, but are not
16 limited to, minimum meal periods and rest periods, and maximum hours of work, but not less than
17 eight hours per day or 40 hours per week; however, after 40 hours of work in one week overtime
18 may be paid, but in no case at a rate higher than one and one-half times the regular rate of pay of
19 the employees when computed without benefit of commissions, overrides, spiffs and similar benefits.

20 (2) Nothing contained in ORS 653.010 to 653.261 shall be construed to confer authority upon the
21 commissioner to regulate the hours of employment of employees engaged in production, harvesting,
22 packing, curing, canning, freezing or drying any variety of agricultural crops, livestock, poultry or
23 fish.

24 (3) Rules adopted by the commissioner pursuant to subsection (1) of this section do not apply
25 to individuals employed by this state or a political subdivision or quasi-municipal corporation
26 thereof if other provisions of law or collective bargaining agreements prescribe rules pertaining to
27 conditions of employment referred to in subsection (1) of this section, including meal periods, rest
28 periods, maximum hours of work and overtime.

29 (4) Rules adopted by the commissioner pursuant to subsection (1) of this section regarding meal
30 periods and rest periods do not apply to nurses who provide acute care in hospital settings if pro-
31 visions of collective bargaining agreements entered into by the nurses prescribe rules concerning
32 meal periods and rest periods.

33 *[(5)(a) The commissioner shall adopt rules regarding meal periods for employees who serve food*
34 *or beverages, receive tips and report the tips to the employer.]*

35 *[(b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commissioner*
36 *shall permit an employee to waive a meal period. However, an employer may not coerce an employee*
37 *into waiving a meal period.]*

38 *[(c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the com-*
39 *missioner may assess a civil penalty not to exceed \$2,000 against an employer that the commissioner*
40 *finds has coerced an employee into waiving a meal period in violation of this subsection. Each violation*
41 *is a separate and distinct offense. In the case of a continuing violation, each day's continuance is a*
42 *separate and distinct violation.]*

43 *[(d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS*
44 *183.745. All sums collected as penalties under this subsection shall be applied and paid over as pro-*
45 *vided in ORS 653.256 (3).]*

1 **SECTION 3.** The amendments to ORS 653.261 by section 2 of this 2007 Act become oper-
2 **ative on January 2, 2012.**
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