

A-Engrossed
House Bill 3307

Ordered by the House April 18
Including House Amendments dated April 18

Sponsored by Representatives WITT, DEMBROW; Representative REARDON

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.

Requires employer who fails to provide meal period or rest period breaks in accordance with rules adopted by Commissioner of Bureau of Labor and Industries to pay additional one and one-half hours of wages for each day employer is in violation of rules. **Creates exception.**

A BILL FOR AN ACT

1
2 Relating to required payment for break periods not provided to employees; 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 adopt rules prescrib-
6 ing such minimum conditions of employment, excluding minimum wages, in any occupation as may
7 be necessary for the preservation of the health of employees. The rules may include, but are not
8 limited to, minimum meal periods and rest periods, and maximum hours of work, but not less than
9 eight hours per day or 40 hours per week; however, after 40 hours of work in one week overtime
10 may be paid, but in no case at a rate higher than one and one-half times the regular rate of pay of
11 the employees when computed without benefit of commissions, overrides, spiffs and similar benefits.

12 **(2) Except as provided in subsection (3) of this section, if an employer fails to provide an**
13 **employee a meal period or rest period in accordance with the applicable rules adopted by the**
14 **commissioner pursuant to subsection (1) of this section, the employer shall pay the em-**
15 **ployee, in addition to any other compensation otherwise due, one and one-half additional**
16 **hours of pay at the employee's regular rate of compensation for each workday in which the**
17 **meal period or rest period is not provided.**

18 **(3) An employer is not liable for payment of the additional compensation required under**
19 **subsection (2) of this section if:**

20 **(a) The employer has a written policy that permits employees to take meal periods and**
21 **rest periods that complies with rules adopted by the commissioner;**

22 **(b) The duties of the employee permit the employee to leave the employee's work station**
23 **without being relieved of duty or seeking permission of a supervisor; and**

24 **(c) The employee fails to establish that the employer knew that the employee was not**
25 **provided meal periods or rest periods in accordance with the rules adopted by the commis-**
26 **sioner.**

27 **(4) Nothing in this section is intended to affect:**

28 **(a) Whether an employer is in compliance with rules adopted by the commissioner to**

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 **require meal periods and rest periods; or**

2 **(b) The liability of an employer for the payment of fines imposed pursuant to rules**
3 **adopted by the commissioner to require meal periods and rest periods.**

4 **(5) The payment of the additional compensation required under subsection (2) of this**
5 **section does not relieve an employer of the duty to provide meal periods and rest periods in**
6 **accordance with the rules adopted by the commissioner.**

7 [(2)] **(6)** Nothing contained in ORS 653.010 to 653.261 shall be construed to confer authority upon
8 the commissioner to regulate the hours of employment of employees engaged in production, har-
9 vesting, packing, curing, canning, freezing or drying any variety of agricultural crops, livestock,
10 poultry or fish.

11 [(3)] **(7)** Rules adopted by the commissioner pursuant to subsection (1) of this section do not
12 apply to individuals employed by this state or a political subdivision or quasi-municipal corporation
13 thereof if other provisions of law or collective bargaining agreements prescribe rules pertaining to
14 conditions of employment referred to in subsection (1) of this section, including meal periods, rest
15 periods, maximum hours of work and overtime.

16 [(4)] **(8)** Rules adopted by the commissioner pursuant to subsection (1) of this section regarding
17 meal periods and rest periods do not apply to nurses who provide acute care in hospital settings if
18 provisions of collective bargaining agreements entered into by the nurses prescribe rules concerning
19 meal periods and rest periods.

20 [(5)(a)] **(9)(a)** The commissioner shall adopt rules regarding meal periods for employees who
21 serve food or beverages, receive tips and report the tips to the employer.

22 (b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commis-
23 sioner shall permit an employee to waive a meal period. However, an employer may not coerce an
24 employee into waiving a meal period.

25 (c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the
26 commissioner may assess a civil penalty not to exceed \$2,000 against an employer that the commis-
27 sioner finds has coerced an employee into waiving a meal period in violation of this subsection. Each
28 violation is a separate and distinct offense. In the case of a continuing violation, each day's con-
29 tinuance is a separate and distinct violation.

30 (d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS
31 183.745. All sums collected as penalties under this subsection shall be applied and paid over as
32 provided in ORS 653.256 (4).

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