

## Employment At Will

### Technical Assistance: FAQs

The common law rule regarding the employer-employee relationship allows the termination of the relationship by either party, without notice and without cause.

Oregon courts have long followed this general rule of "at-will" employment. This means that generally, in the absence of a contract or statute to the contrary, Oregon employers may discharge an employee at any time and for any reason, or for no reason at all. *Simpson v. Western Graphics*, 293 Or 96, 99, 643 P2d 1276 (1982); *Nees v. Hocks*, 272 Or 210, 216, 536 P2d 512 (1975).

Most employers choose to reserve the right to employ at will with specific language in personnel policies.

**Example:** "We reserve the right to employ at will. This means that employment can be terminated, with or without cause, and with or without notice, at any time, at the option of the company or at the option of the employee."

To maintain at-will status, it's wise for employers to indicate that policies are merely guidelines and are not to be construed as a contract.

**Example:** "These policies are not to be construed as a contract of employment. We expressly reserve the right to change, add to, or delete policies at any time. Changes will be effective on dates determined by the company, and you may not rely on policies that have been superseded. No supervisor or manager other than our Chief Executive Officer, Beau Lee, has authority to alter the policies, and all such changes must be in writing."

Declaring and retaining at-will status provides an employer greater flexibility in the workplace, but being an at-will employer is not a cure-all or a substitute for establishing clear policies, keeping thorough documentation, and applying consistent disciplinary practices.

Since organizations that employ individuals at will may still be called upon to defend various types of employment claims in court or before state or federal agencies, prudent at-will employers will maintain records showing a legitimate business reason for any important personnel action.

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FORMAT.

## Meal and Rest Period Rules

### Technical Assistance: FAQs

#### **TECHNICAL ASSISTANCE FOR EMPLOYERS**

**Oregon Bureau of Labor and Industries**

**800 NE Oregon Street, Suite 1045 Portland, OR 97232**

#### **LAWS REGULATING MEAL AND REST PERIODS FOR ADULT EMPLOYEES**

Unless exempt, Oregon law requires employers to provide meal and rest periods to employees. Although the federal Fair Labor Standards Act (FLSA) also covers most Oregon employees and does not require meal or rest periods, employers must comply with the law that is most beneficial to the employee—in this case, the Oregon law.

Certain government employees and employees who are exempt from minimum wage and overtime are also exempt from the rest and meal period requirements of the law; for example, exempt executive, administrative and professional employees. (See ORS 653.020 or contact BOLI for more information regarding exempt employees.)

The typical adult employee whose work period is eight hours long is entitled to receive at least a 30-minute unpaid meal period and two paid ten-minute rest breaks. Different provisions apply to minor employees under the age of 18. (Contact BOLI for more information.)

Additional rest breaks are required to be provided by employers of 25 or more to employees to express milk for a child 18 months of age or younger, unless the rest periods cause an undue hardship to the employer. Employers are also required to make a reasonable effort to provide a private location where the employee can express milk. (See the FAQ/Fact Sheet under Breaks: Express of Breast Milk.)

The provisions of the rest and meal period rules may be modified by the terms of a collective bargaining agreement if the terms of the agreement specifically prescribe rules concerning rest and meal periods.

Oregon law provides BOLI with the authority to assess civil penalties against employers of up to \$1,000 for each violation of the meal and rest period provisions of the law.

The following are answers to some of the most commonly asked questions regarding meal and rest periods.

#### **MEAL PERIODS Q & A**

##### **Q. What are the basic requirements for meal periods under Oregon law?**

A. Meal periods of not less than 30 minutes must be provided to non-exempt employees who work 6 or more hours in one work period. No meal period is required if the work period is less than 6 hours. Additional meal periods are required to be provided to employees who work 14 hours or more. (See chart at the end of this fact sheet.)

Ordinarily, employees are required to be relieved of all duties during the meal period. Under exceptional circumstances, however, the law allows an employee to perform duties during a meal period. When that happens, the employer must pay the employee for the whole meal period.

##### **Q. How is the “work period” determined?**

A. Work period is defined as the period between the time an employee begins work and the time the

employee ends work, including all rest breaks 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 do not count as part of the work period unless the employee continues to perform duties during the meal period.

**Q. Is the meal period required to be taken during a particular time during the worker's shift?**

A. Yes; if the work period is at least six hours but less than seven hours, 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.

**Q. Are there exceptions to the requirement to provide meal periods?**

A. Yes; there are four exceptions to the requirement that an employee be provided with a 30-minute meal period in which the employee is relieved of all duties. They are as follows:

1) The failure to provide a meal period was caused by unforeseeable equipment failures, acts of nature or other exceptional and unanticipated circumstances that only rarely and temporarily preclude the provision of a meal period.

2) Industry practice or custom has established a paid meal period of less than 30 minutes (but no less than 20 minutes) during which the employee is relieved of all duties.

3) Providing a 30-minute, unpaid meal period where the employee is relieved of all duties would impose an undue hardship on the operation of the employer's business. When an employer can demonstrate that providing an employee a meal period would impose an undue hardship on the operation of the business and does not provide the full 30-minute meal period, employees must still be provided with adequate time to consume a meal, rest and use the restroom, and must be paid for this time, in addition to being provided all rest periods required by law for the number of hours worked in any given shift. In addition, the employer must give notice to each employee affected by the undue hardship provision on a form prescribed by BOLI and maintain a copy of the notice for the duration of the employee's employment and for at least six months after the termination date of the employee. The form is available at [www.oregon.gov/BOLI/ /docs/WH-161.pdf](http://www.oregon.gov/BOLI/ /docs/WH-161.pdf)

4) The employee is a tipped food and beverage server who has *voluntarily* waived their meal period under the following conditions:

- The employee is employed to serve food or beverages, and receives and reports tips to the employer.
- The employee is at least 18 years of age.
- The employee voluntarily requests to waive the meal period. (For newly hired employees, the request to waive the meal period may not be made until the employee has worked for the employer at least seven days.)
- The request to waive the meal period is in writing on a form prescribed by BOLI at [www.oregon.gov/BOLI/WHD/Meal\\_Waivers.shtml](http://www.oregon.gov/BOLI/WHD/Meal_Waivers.shtml)
  
- The employer retains a copy of the meal waiver for six months after the employee separates from employment.
- The employee has an opportunity to consume food during shifts of six hours or longer.
- The employee is paid for any meal period in which the employee is not relieved of all duty.
- When the employee works longer than eight hours, the employee must be given a meal period in which the employee is relieved of all duty.
- The employer keeps records clearly showing whether or not the employee has received the meal period.
- The employer conspicuously posts a notice provided by BOLI regarding rest and meal periods. The notice is available at [www.oregon.gov/BOLI/WHD/Meal\\_Waivers.shtml](http://www.oregon.gov/BOLI/WHD/Meal_Waivers.shtml)

**Q. What factors demonstrate that providing a meal period to an employee would impose an**

### **undue hardship on the operation of the employer's business?**

A. "Undue hardship" is defined as "significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business." In determining whether providing a meal period would impose an undue hardship on the operation of the employer's business, the following factors may be considered:

- The employer's cost of complying with the requirement to provide a meal period.
- The overall financial resources of the employer.
- The number of persons employed at the particular worksite and their qualifications to relieve the employee; the total number of persons employed by the employer; and the number, type and geographic separateness of the employer's worksites.
- The effect providing the meal period would have on: the start-up or shutdown of machinery in continuous operation industrial processes; intermittent and unpredictable workflow not in the control of the employer or employee; the perishable nature of materials used; and the safety and health of employees, patients, clients, and the general public.

### **REST BREAKS Q & A**

#### **Q. What are the basic requirements for rest periods under Oregon law?**

A. Oregon law requires an employer-paid rest period of not less than 10 minutes for every segment of four hours or major part thereof (two hours and one minute through four hours) worked in one work period. This time must be taken in addition to and separately from required meal periods. The rest period should be taken as nearly as possible in the middle of the work segment. It is prohibited for an employer to allow employees to add the rest period to a meal period or to deduct rest periods from the beginning or end of the employee's work shift.

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

- The employee is 18 years of age or older;
- The employee works less than five hours in any period of 16 continuous hours;
- The employee is working alone;
- 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
- The employee is allowed to leave the employee's assigned station when the employee must use the restroom facilities.

#### **Q. What does "major portion" of four hours mean?**

A. The "major portion" of four hours means any segment greater than two hours worked. Whenever a work segment exceeds two hours, the employer must provide a rest break for that segment.

In order to determine the number of rest periods to which an employee is entitled, determine the employee's total work period (start time to end time, excluding meal periods) and count the number of four-hour segments or major portions of four hours in the period.

For example, say an employee works exactly two hours, from 9:00 AM to 11:00 AM. Since these two hours are not the "major portion" of four hours, the employer does not need to provide the employee with a rest period.

If the employee works 2½ hours, however, from 9:00 AM to 11:30 AM, these 2½ hours would be the major portion of four hours, and the employer would be required to provide one 10-minute rest period approximately in the middle of the work period.

An employee who works from 8:00 AM to 5:00 PM and takes a 30-minute unpaid meal period at noon is entitled to two 10-minute paid rest breaks. The work period is 8½ hours, with two work segments of four hours or more, therefore, the employee should receive one rest break at approximately 10:00

AM, and another at approximately 2:45 PM.

An employee who works a work shift longer than 10 hours is entitled to a third rest break. (See chart at the end of this fact sheet.)

**Q. Must the rest breaks always be given in the middle of each four-hour work segment?**

A. Yes; insofar as feasible considering the nature and circumstances of the work, rest periods are to be taken by an employee approximately in the middle of each four hour (or major part thereof) segment. The rest period may not 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.

**OTHER COMMONLY ASKED QUESTIONS**

**Q. May I require my employees to stay on the premises during their meal and rest periods?**

A. Yes; employees must be completely relieved of all duties, however, unless exempt.

**Q. Am I obligated to provide additional rest breaks to employees who are smokers?**

A. No.

**Q. My employee arrived 10 minutes late for work and said she would work through her first break to make up the time. Is this acceptable?**

A. No; your employee must actually take all required breaks. The rest break may not be deducted from the beginning or end of the work period.

**Q. My employee says he prefers to skip his afternoon rest break and leave 10 minutes early. Is that OK?**

A. No; the law requires employees to take all required breaks in the middle of each four hour (or major part thereof) work segment. The rest period may not be deducted from the end of the work period to reduce the overall length of the total work period.

**Q. If an employee works through the lunch period and wants to leave 30 minutes early, may I allow that?**

A. Generally, no. If it is possible for you to provide the 30-minute meal period, you must do so and require the employee to take the meal break. If, however, one of the exceptions to the requirement to provide a meal period applies, you must pay the employee for working through the meal period, and you may then choose to shorten the employee's work shift.

**Q. Sometimes my employees would like to skip their breaks and add the time on to their meal period so they can have an extended lunch. As long as they receive the total time required, is this allowed?**

A. No. To be in compliance with the law, you must require employees to take all breaks separately and approximately in the middle of each segment of four hours or major part thereof worked as the nature of the work allows.

**Q. No matter how often I remind my employee, he refuses to take his meal and rest breaks. Since I have given him every opportunity to take the breaks but he chooses not to, am I in compliance?**

A. No; your employee may not legally waive his rights to receive required rest and meal periods. To be in compliance, you must require your employee to take all mandated breaks, and you may even need to discipline an employee who refuses to do so.

**Numbers of Meal and Rest Periods Required Based on Length of Work Period**

<b>Length of work period</b>	<b>Number of rest breaks required</b>	<b>Number of meal periods required</b>
2 hrs or less	0	0
2 hrs 1 min - 5 hrs 59 min	1	0

6 hrs	1	1
6 hrs 1 min - 10 hrs	2	1
10 hrs 1 min - 13 hrs 59 min	3	1
14 hrs	3	2
14 hrs 1 min - 18 hrs	4	2
18 hrs 1 min - 21 hrs 59 min	5	2
22 hrs	5	3
22 hrs 1 min - 24 hrs	6	3

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