

Agriculture: Rest And Meal Periods

Technical Assistance: FAQs

Unless specifically exempted (see ORS 653.020(1)), effective February 1, 2004, agricultural employees in Oregon must receive rest breaks and meal periods.

Chapter 653 of the Oregon Revised Statutes defines required conditions of employment in Oregon and gives the Bureau of Labor and Industries (BOLI) authority to promulgate and enforce rules in this area. Although the Fair Labor Standards Act (FLSA) covers most Oregon employers and does not require rest breaks or meal periods, employers must comply with the law that is most beneficial to the employee -- in this case, the Oregon law.

ORS 653.261 and 653.256 allow BOLI to issue rules on breaks and assess penalties for violations. OAR 839-020-0050 sets forth the specific rules, and OAR 839-020-1010(1)(i) and (j) allow for civil penalties for rule violations, which can be as high as \$1,000 per violation. OAR 839-020-1010(2). Under Oregon law, the typical adult employee whose work period is eight hours long must receive at least a 30-minute unpaid meal period and two paid ten-minute rest breaks. Following are answers to some of the most commonly asked questions regarding meal period and rest break rules.

MEAL PERIODS Q & A

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

A. Oregon employers must provide employees with at least a 30-minute unpaid meal period when the work period is six hours or greater. The law requires an uninterrupted period in which the employee is relieved of all duties. No meal period is required if the work period is less than six hours.

Q. How is the "work period" determined?

A. The work period is defined as the period between the time an employee begins work and time the employee ends work, including all rest breaks and any period of one hour or less 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. OAR 839-020-0050(4).

Q. Does the meal period have to be taken during a particular part of the worker's shift?

A. Yes, but there is flexibility for when the meal period must be taken: If the work period is at least six hours but less than seven hours, the meal must be taken

between the second and fifth hour worked. If the work period is more than seven hours, the meal period must be taken between the third and sixth hour worked.

Q. What if the nature or circumstances of the work prevent me from giving my workers an uninterrupted 30-minute meal period?

A. If, because of the nature or circumstances of the work, an employee is required to remain on duty or to perform any tasks during the meal period, the employer must consider the meal period as hours worked and pay the employee for the period. Whenever it is possible to provide an uninterrupted 30-minute meal period, however, the employer must do so. The law allows for exceptions in unusual, unanticipated circumstances beyond the employer's control.

Factors to be considered in determining whether the "nature or circumstances" of the work prevent an employee from receiving a meal period in which they are completely relieved from all duty include:

- Safety and health of employees, patients, clients and the public;
- Availability of other employees to provide relief;
- Qualifications of those available to provide relief;
- Costs involved in the shutdown/startup of machinery;
- Intermittent and unpredictable work flow not in the control of the employer or employees;
- Unforeseeable equipment failures, emergencies, acts of nature. OAR 839-020-0050(3).

In addition to these factors, the following factors specific to the agriculture industry may also prevent an employee from receiving a meal period in which they are completely relieved from all duties:

- Costs involved in shutting down/starting up power-driven farm equipment during a continuous harvesting operation;
- Emergencies created by acts of nature, including imminent and adverse weather conditions that are likely to result in significant or substantial economic injury or reduced revenue from production, yield or quality losses if harvesting or planting is prevented;
- Unforeseeable conditions which pose a serious risk of crop failure; and
- Safety and health of employees, public, or others in contact with crops or pesticide applications to crops.

Note: These factors may also prevent employers from establishing and maintaining regularly scheduled rest and meal periods, however, employees must always receive rest breaks and may not be prevented from being relieved of all duties for meal periods for more than two consecutive calendar days.

Q. Are the meal period rules different for minors?

A. The rules are slightly different for minors (employees under 18). Minors must receive at least a 30-minute meal period no later than five hours and one minute after beginning work. OAR 839-021-0072(2). The "nature or circumstances" exception outlined above applies only to minors 16- and 17 years of age; not to 14- and 15-year-olds, who must always receive the required meal period regardless of the nature of the job. OAR 839-021-0072.

REST BREAKS Q & A

Q. What are the basic requirements for rest breaks under Oregon law?

A. Employers must provide workers with a paid, uninterrupted 10-minute rest break for every four-hour segment or major portion thereof in the work period. OAR 839-020-0050(1)(b). The rest break should be given in the middle of each segment, whenever possible. If the nature or circumstances of the employee's work prevent an employer from establishing and maintaining regularly scheduled break times, so long as the employee receives the required breaks, it is not necessary for the break times to be scheduled at specific times.

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

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

Q. How do I calculate the number of rest periods I must give my employees in one day?

A. 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.

Example: Chelsea works exactly two hours, from 9:00 a.m. to 11:00 a.m. Since this is not the major portion of four hours, her employer does not need to provide a rest break.

Example: Lilah works 2½ hours, from 9:00 a.m. to 11:30 a.m. This is the major portion of four hours, so Lilah must receive one 10-minute paid rest break.

Example: Alan works from 8:00 a.m. to 4:30 p.m. and takes a 30-minute unpaid meal period at noon. His work period is 8 hours, which contains two four-hour segments. Therefore, Alan must receive two 10-minute paid rest breaks in his work day, one at approximately 10:00 a.m. and one at approximately 2:30 p.m.

Example: Erika works from 8:00 a.m. to 6:30 p.m. Her employer gives her a half-hour paid lunch period. Erika's work period is thus 10 hours (start time to end time, excluding the meal period). Since her work period contains two four-hour segments, Erika must receive two paid 10-minute rest breaks. The remaining two-hour segment is not a major portion of four hours and therefore does not require a

third rest break. Note, however, that if Erika worked a slightly longer shift, say until 6:45 p.m., a third rest break would be required.

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

A. Generally, employees should be scheduled to take rest breaks as close to the middle of each four-hour work segment as possible, unless the nature or circumstances of the work prevent it. If the nature or circumstances of the work prevent the employer from providing a scheduled break, the employee must still receive the required break, but may take it at another point in the work period. OAR 839-020-0050(1)(b) and (2).

Factors to be considered in determining whether the "nature or circumstances" of the work prevent an employee from receiving a regularly scheduled rest period include:

- Safety and health of employees, patients, clients and the public;
- Availability of other employees to provide relief;
- Qualifications of those available to provide relief;
- Costs involved in the shutdown/startup of machinery;
- Intermittent and unpredictable work flow not in the control of the employer or employees;
- Unforeseeable equipment failures, emergencies, acts of nature. OAR 839-020-0050(3).

In addition to these factors, the following factors specific to the agriculture industry may also prevent an employee from receiving a regularly scheduled rest period:

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- Unforeseeable conditions which pose a serious risk of crop failure; and
- Safety and health of employees, public, or others in contact with crops or pesticide applications to crops.

Q. Are there different rest break rules for minors?

A. The rules for minors are similar, but minors must receive paid, uninterrupted rest breaks of at least 15 minutes for each four-hour segment or major portion thereof. OAR 839-021-0072.

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

Length of work period	Number of rest breaks required	Number of meal periods required
2 hrs or less	0	0
2 hrs, 1 min-5 hrs, 59 mins	1	0
6 hrs	1	1
6 hrs, 1 min-10 hrs	2	1
10 hrs, 1 min-13 hrs 59 mins	3	1
14 hrs	3	2
14 hrs-1 min to 18 hrs	4	2
18 hrs, 1 min-21 hrs, 59 mins	5	2
22 hrs	5	3
22 hrs, 1 min-24 hrs	6	3

OTHER COMMONLY ASKED QUESTIONS

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

A. Yes, as long as the employees are completely relieved of all duties.

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

A. No.

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

A. No. Your employee must actually take all required breaks. The rest break cannot 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. As indicated above, you must require employees to take all required breaks during the work period.

Q. If my 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, the nature or circumstances of the job prevent you from providing an uninterrupted meal period, you must pay the employee for working through the meal period, and you may then choose to shorten the employee's shift. Note: If the employee's total work period is less than six hours, the employer need not provide a meal period at all. In some cases, it may be mutually desirable to schedule an employee for a work period of less than six hours. If the work period is 5½ hours, for example, the employer need only provide one paid 10-minute rest break, and no meal period is required.

Q. My employees say they prefer to skip their breaks and instead add them on to the meal period so they can have an extended lunch. As long as they receive the correct total break time, is this allowed?

A. No. To be in compliance, you must require employees to take all breaks separately and during the proper time periods (unless the nature or circumstances of the work require otherwise).

Q. No matter how often I remind my employee, he refuses to take his 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 cannot legally waive his rights to receive the required rest breaks or meal periods. It is not the employee's choice whether or not to take the required breaks. 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.

The Technical Assistance for Employers unit offers employer seminars, handbooks, and other materials covering a number of topics. For additional information, visit

our website at www.oregon.gov/boli/ta or call our Employer Assistance line.

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