
A BILL FOR AN ACT

RELATING TO MEAL BREAKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that, although Act 172,
2 Session Laws of Hawaii 1999, amended the law to make it illegal
3 for an employer to prohibit an employee from expressing
4 breastmilk during any meal period or other break period required
5 by law, neither our state or federal wage and hour laws
6 currently require employers to provide employees over the age of
7 sixteen any meal period or rest break no matter how many
8 consecutive hours they may be required to work. Employees who
9 must work a full day or an eight-hour shift or more, regardless
10 of age or sex, should not be denied a reasonable period of time
11 to rest and consume a meal as is commonly required by other
12 states such as California, Oregon, and Washington.

13 The purpose of this Act is to require an employer to
14 provide all employees a rest or meal break period of at least
15 thirty consecutive minutes for employees who work a five or more
16 continuous hour shift, unless a collective bargaining agreement
17 provides an express provision for meal breaks or an employee
18 waives the requirement for a meal break.



1 SECTION 2. Section 387-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§387-3 Maximum hours.** (a) No employer shall, except as
4 otherwise provided in this section, employ any employee for a
5 workweek longer than forty hours unless the employee receives
6 overtime compensation for the employee's employment in excess of
7 the hours above specified at a rate not less than one and one-
8 half times the regular rate at which the employee is employed.

9 For the purposes of this section,

10 (1) "Salary" means a predetermined wage, exclusive of the
11 reasonable cost of board, lodging, or other
12 facilities, at which an employee is employed each pay
13 period; and

14 (2) If an employee performs two or more different kinds of
15 work for the same employer, the total earnings for all
16 such work for the pay period shall be considered to
17 have been earned for performing one kind of work.

18 (b) The regular rate of an employee who is employed on a
19 salary basis shall be computed as follows:

20 (1) If the employee is employed on a weekly salary, the
21 weekly salary and the reasonable cost of board,



1 lodging, or other facilities, if furnished to the
2 employee, shall be divided by forty[~~-~~];

3 (2) If the employee is employed on a biweekly salary, the
4 biweekly salary and the reasonable cost of board,
5 lodging, or other facilities, if furnished to the
6 employee, shall be divided by two and the quotient
7 divided by forty[~~-~~];

8 (3) If the employee is employed on a semi-monthly salary,
9 the semi-monthly salary and the reasonable cost of
10 board, lodging, or other facilities, if furnished to
11 the employee, shall be multiplied by twenty-four, the
12 product divided by fifty-two and the quotient divided
13 by forty[~~-~~]; and

14 (4) If the employee is employed on a monthly salary, the
15 monthly salary and the reasonable cost of board,
16 lodging, or other facilities if furnished to the
17 employee, shall be multiplied by twelve, the product
18 divided by fifty-two and the quotient divided by
19 forty.

20 (c) The regular rate of an employee who is employed on a
21 salary basis and in addition receives other wages such as, but
22 not limited to, commissions, bonus, piecework pay, and hourly or

1 daily pay shall be computed in the manner provided in this
2 subsection. As used [~~hereinabove,~~] in this subsection, the term
3 "other wages" shall not include the reasonable cost of board,
4 lodging, or other facilities.

5 (1) If the employee's salary and the reasonable cost of
6 board, lodging, or other facilities, if furnished to
7 the employee, equal or exceed fifty per cent of the
8 employee's total earnings for the pay period, the
9 total earnings shall be reduced to a regular rate in
10 the manner provided in [~~paragraph~~] subsection (b)(1),
11 (2), (3), or (4) [~~of subsection (b)~~], whichever is
12 applicable.

13 (2) If the employee's salary and the reasonable cost of
14 board, lodging, or other facilities, if furnished to
15 the employee, are less than fifty per cent of the
16 employee's total earnings for the pay period, the
17 total earnings shall be reduced to a regular rate in
18 the manner provided in [~~paragraph~~] subsection(b)(1),
19 (2), (3), or (4) [~~of subsection (b)~~], whichever is
20 applicable, except that the actual number of hours
21 worked in the workweek shall be substituted for the
22 final divisor of forty. [~~Such an~~] The employee shall



1 receive overtime compensation for employment in excess
2 of forty hours in a workweek at a rate not less than
3 one-half times the employee's regular rate.

4 (d) The regular rate of an employee whose compensation is
5 based on other than salary shall be computed in the manner
6 provided in [~~paragraph (2) of subsection (c).~~] subsection
7 (c)(2). The reasonable cost of board, lodging, or other
8 facilities, if furnished to the employee, shall be included in
9 computing the employee's regular rate. [~~Such an~~] The employee
10 shall receive overtime compensation for such employment in
11 excess of forty hours in a workweek at a rate not less than one-
12 half times the employee's regular rate.

13 (e) An employer[~~r~~]:

14 (1) Who is engaged in agriculture and in the first
15 processing of milk, buttermilk, whey, skim milk, or
16 cream into dairy products, or in the processing of
17 sugar cane molasses or sugar cane into sugar (but not
18 refined sugar) or into syrup, or in the first
19 processing of or in canning or packing any
20 agricultural or horticultural commodity, or in
21 handling, slaughtering, or dressing poultry or
22 livestock; [~~or~~]



1 (2) Who is engaged in agriculture and whose agricultural
2 products are processed by an employer who is engaged
3 in a seasonal pursuit or in processing, canning, or
4 packing operations referred to in paragraph (1); or

5 (3) Who is at any place of employment engaged primarily in
6 the first processing of, or in canning or packing
7 seasonal fresh fruits[+],

8 shall not be required to pay overtime compensation for hours in
9 excess of forty in a workweek to any of the employer's employees
10 during any of twenty different workweeks, as selected by the
11 employer, in any yearly period commencing July 1, for employment
12 in any place where the employer is so engaged. The employer,
13 however, shall pay overtime compensation for such employment in
14 excess of forty-eight hours in any such exempt workweek at the
15 rate and in the manner provided in subsections (a), (b), (c),
16 and (d), whichever is applicable, except that the word "forty-
17 eight" shall be substituted for the word "forty" wherever it
18 appears in subsections (b), (c), and (d).

19 (f) No employer shall employ any employee in split shifts
20 unless all of the shifts within a period of twenty-four hours
21 fall within a period of fourteen consecutive hours, except in
22 case of extraordinary emergency.



1 (g) No employee shall be required to work more than five
2 hours continuously without an interval of at least thirty
3 consecutive minutes for a rest or meal break, provided that the
4 employer may select the time of the rest or meal break during
5 the employee's work day, except in cases where:

6 (1) A collective bargaining agreement expressly provides
7 for employee meal breaks;

8 (2) The rest or meal break requirement offered by an
9 employer is waived by the employee, provided that the
10 employee's work day may not be shortened without the
11 consent of the employer;

12 (3) The employer is the operator of a continuously
13 operating facility that is regulated by an
14 environmental permit; provided that an on-duty meal is
15 provided by the employer; or

16 (4) Upon application by an employer for exemption of
17 specific job positions, the department of labor and
18 industrial relations has reviewed the application, has
19 issued an order that amends the rest or meal break
20 requirement for any of the specified job positions,
21 and has determined that the order is consistent with



1 the health and welfare of the affected employees. The
2 employer's application shall:

3 (A) Be in writing;

4 (B) Designate the job positions for which the
5 exemption is sought; and

6 (C) Provide justifications explaining why the
7 required rest or meal break would be impractical,
8 unsafe, or unreasonable given the job
9 requirements.

10 (h) Any order relating to meal breaks issued or revoked by
11 the department of labor and industrial relations shall be in
12 writing and shall be conspicuously posted on the employer's
13 premises. The department of labor and industrial relations
14 shall have the right to revoke any order at any time and shall
15 maintain a record of all applications and actions taken by the
16 department pursuant to this section. All records shall be
17 subject to public inspection upon submittal of a written request
18 to the department by any individual.

19 [+g+] (i) This section shall not apply to any overtime
20 hours worked by an employee of an air carrier subject to Title
21 II of the Railway Labor Act, 45 U.S.C. section 181 et seq.;



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1 provided such overtime hours are the result of a voluntary
2 agreement between employees to exchange work time or days off."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Alex M. Swanson

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Report Title:

Meal Breaks

Description:

Requires the provision of rest or meal break periods of at least 30 consecutive minutes for employees who work 5 or more continuous hours unless a collective bargaining agreement provides an express provision for meal breaks or an employee waives the requirement for a rest of meal period.

