
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, though 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, nor 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 an employer is subject to a
17 collective bargaining agreement that contains an express
18 provision for employee meal breaks, a common carrier of



1 passengers or a power generating utility, or the operator of a
2 continuously operating facility regulated by an environmental
3 permit.

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

6 "**S387-3 Maximum hours.** (a) No employer [~~shall~~], except
7 as otherwise provided in this section, shall employ any employee
8 for a workweek longer than forty hours unless the employee
9 receives overtime compensation for the employee's employment in
10 excess of the hours above specified at a rate not less than one
11 and one-half times the regular rate at which the employee is
12 employed.

13 For the purposes of this section,

14 (1) "Salary" means a predetermined wage, exclusive of the
15 reasonable cost of board, lodging, or other
16 facilities, at which an employee is employed each pay
17 period; and

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



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

3 (1) If the employee is employed on a weekly salary, the
4 weekly salary and the reasonable cost of board,
5 lodging, or other facilities, if furnished to the
6 employee, shall be divided by forty.

7 (2) If the employee is employed on a biweekly salary, the
8 biweekly salary and the reasonable cost of board,
9 lodging, or other facilities, if furnished to the
10 employee, shall be divided by two and the quotient
11 divided by forty.

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

18 (4) If the employee is employed on a monthly salary, the
19 monthly salary and the reasonable cost of board,
20 lodging, or other facilities if furnished to the
21 employee, shall be multiplied by twelve, the product



1 divided by fifty-two and the quotient divided by
2 forty.

3 (c) The regular rate of an employee who is employed on a
4 salary and in addition receives other wages such as, but not
5 limited to, commissions, bonus, piecework pay, and hourly or
6 daily pay shall be computed in the manner provided in this
7 subsection. As used [~~hereinabove,~~] in this subsection, the term
8 "other wages" shall not include the reasonable cost of board,
9 lodging, or other facilities.

10 (1) If the employee's salary and the reasonable cost of
11 board, lodging, or other facilities, if furnished to
12 the employee, equal or exceed fifty per cent of the
13 employee's total earnings for the pay period, the
14 total earnings shall be reduced to a regular rate in
15 the manner provided in [~~paragraph~~] subsection (b)(1),
16 (2), (3), or (4) [~~of subsection (b)],~~ whichever [~~is~~
17 applicable.] applies.

18 (2) If the employee's salary and the reasonable cost of
19 board, lodging, or other facilities, if furnished to
20 the employee, are less than fifty per cent of the
21 employee's total earnings for the pay period, the
22 total earnings shall be reduced to a regular rate in



1 the manner provided in [~~paragraph~~] subsection (b)(1),
2 (2), (3), or (4) [~~of subsection (b)~~], whichever [~~is~~
3 ~~applicable,~~] applies, except that the actual number of
4 hours worked in the workweek shall be substituted for
5 the final divisor of forty. Such an employee shall
6 receive overtime compensation for employment in excess
7 of forty hours in a workweek at a rate not less than
8 one-half times the employee's regular rate.

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

18 (e) An employer[~~7~~] who:

19 (1) [~~Who is~~] Is engaged in agriculture and in the first
20 processing of milk, buttermilk, whey, skim milk, or
21 cream into dairy products, or in the processing of
22 sugar cane molasses or sugar cane into sugar (but not



1 refined sugar) or into syrup, or in the first
2 processing of or in canning or packing any
3 agricultural or horticultural commodity, or in
4 handling, slaughtering, or dressing poultry or
5 livestock; or

6 (2) [~~who is~~] Is engaged in agriculture and whose
7 agricultural products are processed by an employer who
8 is engaged in a seasonal pursuit or in processing,
9 canning, or packing operations referred to in
10 paragraph (1); or

11 (3) [~~who is~~] Is at any place of employment engaged
12 primarily in the first processing of, or in canning or
13 packing seasonal fresh fruits;

14 shall not be required to pay overtime compensation for hours in
15 excess of forty in a workweek to any of the employer's employees
16 during any of twenty different workweeks, as selected by the
17 employer, in any yearly period commencing July 1, for employment
18 in any place where the employer is so engaged. The employer,
19 however, shall pay overtime compensation for [~~such~~] employment
20 in excess of forty-eight hours in any [~~such~~] exempt workweek at
21 the rate and in the manner provided in subsections (a), (b), (c)
22 and (d), whichever [~~is applicable,~~] applies, except that the



1 word "forty-eight" shall be substituted for the word "forty"
2 wherever it appears in subsections (b), (c), and (d).

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

7 (g) No employee shall be required to work more than five
8 hours continuously without an interval of at least thirty
9 consecutive minutes for a meal break. A meal break shall
10 consist of not less than thirty minutes during which the
11 employee is relieved of all duties for each work period of not
12 less than five hours. If the work period is six hours or less,
13 the meal period shall be taken between the second and fifth hour
14 worked. If the work period is more than six hours, the meal
15 period shall be taken between the third and sixth hour worked.
16 The employer shall not be required to compensate the employee
17 for the meal break. This subsection shall not apply to any
18 employer who is either:

- 19 (1) Subject to any collective bargaining agreement that
20 expressly provides for employee meal breaks;
21 (2) A common carrier by motor vehicle, a contract carrier
22 by motor vehicle, or a private carrier of property by



1 motor vehicle as these terms are defined in chapter
2 271;

3 (3) A power generating utility, regulated under chapter
4 269; or

5 (4) The operator of a continuously operating facility that
6 is regulated by environmental permit.

7 For purposes of this subsection, "meal break" means any break
8 period during which the employee is provided the opportunity to
9 consume a meal.

10 [~~g~~] (h) This section shall not apply to any overtime
11 hours worked by an employee of an air carrier subject to Title
12 II of the Railway Labor Act, 45 U.S.C. section 181 et seq. ;
13 provided such overtime hours are the result of a voluntary
14 agreement between employees to exchange work time or days off."

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

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



Report Title:

Wage and Hour Law; Meal Breaks

Description:

Requires the provision of rest or meal break periods of at least thirty consecutive minutes for employees who work five or more continuous hours. Clarifies that the employer not be required to compensate the employee for the break. Excludes employers who are subject to a collective bargaining agreement that contains an express provision for employee meal breaks, a common carrier of passengers or a power generating utility, or the operator of a continuously operating facility regulated by an environmental permit. (SD1)

