



Friday, May 9, 2008

## Waiving meal breaks for food and beverage servers

Portland Business Journal - by [Jean Ohman Back](#)

New state rules that allow tipped food and beverage servers to waive their meal breaks present restaurant and bar owners with a complex list of conditions.

The new rules, which went into effect Jan. 1, will likely catch many employers in the food and beverage industry unaware, and may expose them to stiff fines.

Oregon law requires that employers provide an uninterrupted, unpaid 30-minute meal break to employees. A recent change in that law, however, allows tipped food and beverage servers 18 years and older to waive their right to an unpaid meal break with their employer's permission. If an employee does so, then the employer must pay the employee for all meal periods in which the employee is not fully relieved of all duty. These new rules do not apply to other types of tipped restaurant employees, such as bussers, cooks, hosts or hostesses.

The Bureau of Labor and Industries ("BOLI") has issued rules that permit employees to waive their meal periods as long as the waiver is uncoerced.

BOLI's new rules provide a stringent list of prerequisites for the meal waiver provision. The penalty for failing to properly implement these rules or for incorrectly requesting that an employee waive his or her meal period is stiff, punishable by fines of \$1,000 per violation with each continuing day constituting a new violation. Employers in the food and beverage industry should take heed of this new law -- make sure that you know and understand its requirements.

The BOLI regulations provide that employees may waive their meal periods under the following circumstances:

- The employee is at least 18 years of age;
- The employee serves food or beverages;
- The employee receives tips and reports those tips to his or her employer;
- The employee voluntarily requests to waive the employee's meal period no less than seven calendar days after beginning employment;
- The request to waive meal periods is in writing on a BOLI dictated form and is signed and dated by both the employer and the employee;
- The employer keeps a copy of the employee waiver form during the term of the employee's employment and for a period of no less than six months after termination;

- If an employee works six hours or more, the employee is allowed to eat while continuing to work;
- The employer pays for any meal period where an employee is not relieved of all duty;
- The employee is not required to work more than eight hours without an uninterrupted 30-minute meal period where he or she is relieved of all duty;
- The employer keeps accurate records of each employee and whether or not the employee receives a meal period; and
- The employer posts BOLI posters in conspicuous places regarding rest and meal periods.

In addition to these requirements, either the employer or the employee may revoke the agreement to waive an employee's meal period by providing written notice to the other at least seven calendar days before revoking the agreement.

Notwithstanding this revocation provision, if an employee wants to take a meal break, he or she may do so on an occasional basis without revoking the entire waiver agreement by providing his or her employer at least 24 hours' notice, that he or she wishes to take a meal break.

Finally, BOLI has defined that a waiver is "coerced" by an employer in the following circumstances:

- The employer requests or requires an employee to sign a request to waive meal periods (even asking employees if they have any interest in waiving the meal break would be treading on dangerous ground);
- An employee is required to waive meal periods as a condition of hire or at any time while employed;
- The employer requires another person to request or require an employee to waive a meal period; or
- The employee signs a waiver agreement prior to employment or within the first seven calendar days of employment.

These new regulations are fraught with requirements and land mines for employers in the food and beverage industry. One such land mine is the possibility that an employer will fail to pay the employee for a waived meal period. Employers who do consider allowing employees to waive meal periods should take extreme caution. Employers choosing to wade into these muddy waters can find links to the BOLI required waiver agreements and the required posting notice at BOLI's Web page, [www.boli.state.or.us](http://www.boli.state.or.us).

*Jean Ohman Back is an attorney in the Portland office of regional law firm Schwabe Williamson & Wyatt, focusing her practice in the areas of labor & employment and general litigation. She can be reached at 503-796-2960 or [jback@schwabe.com](mailto:jback@schwabe.com).*