

Secretary of State
Amended

STATEMENT OF NEED AND FISCAL IMPACT

An Amended Notice of Proposed Rulemaking Hearing accompanies this form.

Bureau of Labor and Industries, Wage and Hour Division	839
Agency and Division	Administrative Rules Chapter Number

Relating to the provision of rest and meal periods to employees.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Rules pertaining to rest and meal periods

Statutory Authority: ORS 651.060(4); 653.261

Other Authority:

Stats. Implemented: ORS 653.261

Need for the Rule(s): The rule amendment is needed to address the provision of rest and meal periods to employees, including factors to be considered in determining when an employee is prevented from receiving regularly scheduled meal and rest periods.

Documents Relied Upon, and where they are available: The Advisory Committee record is available through the Rules Coordinator.

Fiscal and Economic Impact:

As permitted by ORS 183.335(12), the Agency hereby amends the Statement of Cost of Compliance effect on small business to reflect input provided by the Advisory Committee or that was otherwise unavailable at the time of filing of the original Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

The Fiscal and Economic Impact of the proposed rule is measured by comparing small business costs of compliance with the current rule, with small business costs of compliance with the proposed rule.

For reasons discussed below, this estimate of small business costs of compliance with the proposed rule compares the costs of compliance of the current rule with costs of compliance with the proposed rule for small businesses a) that have been complying with the Agency interpretation of a particular section of the current rule and b) that have not been following the Agency interpretation of the subject section of the current rule.

The provision of the current rule that has been the subject of discussion between the Agency and employers defines "appropriate meal period" as "A period of not less than 30 minutes during which the employee is relieved of all duties..." or "A period in which to eat...while continuing to perform duties or remain on call, which is not deducted from the employee's hours worked. This is permitted only in those cases where the employer can show that the nature or circumstances of the work prevent the employee from being relieved from all duty."

The Agency interpretation has been that the latter provision applies only in exceptional circumstances. The interpretation of the current rule by some employers has been that it always obviates meal periods for employees working in certain types of businesses.

The proposed rule would specifically state the circumstances under which an “appropriate meal period” may include interruptions or remaining on call.

The proposed rule would also include a new definition of “appropriate meal period” when the only employee present at a worksite location who is qualified to perform a job remains on call. The estimate of small business costs of compliance with this provision compared with the cost of compliance with the current rule is also discussed below.

Statement of Cost of Compliance:

1. Fiscal or economic impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): No fiscal impact of the proposed rule compared with the current rule on state agencies or units of local government has been identified.

No economic impact of the proposed rule compared with the current rule on groups representing the public interest has been identified.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Small businesses are defined at ORS 183.336 as those with fewer than 50 employees. According to Oregon Employment Department figures, it is estimated that there are approximately 95,494 small businesses with fewer than 50 employees in Oregon.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: No small businesses have submitted estimates of the economic impact of compliance with the proposed rule compared with the current rule. No specific cost for administrative activities required for compliance with the proposed rule compared with the current rule has been identified.

c. Equipment, supplies, labor and increased administration required for compliance: No small businesses have submitted estimates of the economic impact of compliance with the proposed rule compared with the current rule.

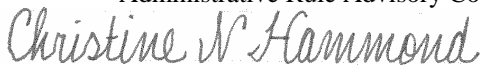
One large business estimates that cost increases to both small and large businesses operating multiple retail establishments with single employee coverage and that are not following the Agency’s interpretation of the subject section of the current rule could, under the proposed rule, amount to over \$1 billion annually if employers provide staffing to cover employees taking meal periods.

For small businesses that are complying with the Agency’s interpretation of the current rule, which is that uninterrupted meal periods are required except in exceptional circumstances, the proposed rule is not anticipated to result in increased costs. This is because under the proposed rule 30 minute meal periods could be broken into segments which may obviate using replacement workers or shutting down the business at mealtimes.

In addition to amending the current rule definitions of “appropriate meal period,” the proposed rule would add an additional definition that would allow the only employee present at a worksite location who is qualified to perform a job to remain on call. This would allow some employers to pay an employee to remain on call under the proposed rule rather than use a replacement worker or shut down the business at mealtimes. Some small businesses may see cost savings if they have been in compliance with the Agency interpretation of the current rule and meet the requirements of this new provision.

How were small businesses involved in the development of this rule? Small businesses are represented on the Advisory Committee.

Administrative Rule Advisory Committee consulted?: yes



Christine Hammond, Administrator, Wage and Hour Division

11/04/08

Signature

Printed name

Date