

BOLI CLARIFIES RULES ON BREAKS AND MEAL PERIODS

I run a small grocery store/deli with just three employees. My employees all work from 8 am to 4 pm every day. Our customer flow is erratic, but there are some fairly predictable “rush” times - namely 11 am to 2 pm. Since we never know how busy we are going to get, I tell all my employees that while they get a break in the morning and another one in the afternoon, they cannot take a lunch break during those three hours. In exchange, I give them whatever they want to eat for lunch every day, free of charge. Am I alright here?

Probably not. Under Oregon law, employers must provide rest and meal periods to their employees. These rest periods must be given within each period of four hours or the major portion of four hours (meaning any period longer than two hours).

In addition, although it is nice that you give your employees food during the lunch hour, you still must provide at least a 30-minute uninterrupted meal period to all employees who work six hours or more during the day. That period must be given between the 2nd and 5th hour if the employee works between six and seven hours, and between the 3rd and 6th hour if the employee works over seven hours.

Recently, BOLI amended its rules to clarify that employees must be relieved of all duties for meal periods except in those cases where the employer can show that *exceptional and unanticipated* circumstances prevent the employee from being relieved from all duty. The rule also clarifies that factors to be considered in determining whether an employee is prevented from receiving regularly scheduled meal and rest periods must pertain to the *ordinary nature* of work performed.

In your case, you can generally predict that the store will be busy between 11 a.m. and 2 p.m. If that is routinely the situation, it might be difficult for you to allege that your employees are not able to take meal periods because of *exceptional and unanticipated* circumstances. Rather, since the lunch rush is routine, you have the chance to schedule your employees so that they receive their required meal periods and you are still able to provide adequate lunchtime service. This might be done by staggering their lunch hours or by you filling in when necessary.

The amended rules also eliminated an anachronistic and confusing provision that allowed an employer to limit a lunch period to 20 minutes if that was consistent with “industry standard or practice.” Although Technical Assistance has received many inquiries over the years as to exactly what that phrase meant, we were never aware of actual industry standards that BOLI could evaluate in order to allow this exception. BOLI is also unaware of any cases where this rule was actually invoked.

For more information about this topic, join Technical Assistance for Employers at a Wage and Hour Laws seminar: September 11 in Portland, September 25 in Salem, October 6 in Gold Beach, and October 21 in Eugene. For more information, visit our website at www.oregon.gov/boli/ta or call us at 971-673-0824.