

Example 1:

Measure History

Measure History For HB 2240

By Representative MATTHEWS; Representatives BUCKLEY, DOHERTY (Pre-session filed.)

-- Relating to meal periods for tipped employees.

1-11(H)		First reading. Referred to the desks of the Co-Speakers.
1-21		Referred to Business and Labor.
2-2		Public Hearing and Work Session held.
2-3		Recommendation: Do pass.
2-7		Second reading.
2-9		Third reading. Carried by Conger. Passed. Ayes, 60.
2-10(S)		First reading. Referred to President's desk.
2-17		Referred to Business, Transportation and Economic Development.
4-26		Public Hearing and Work Session held.
5-2		Recommendation: Do pass.
		Second reading.
5-3		Third reading. Carried by Starr. Passed. Ayes, 27; nays, 2--Kruse, Whitsett; excused, 1--Atkinson.
5-10(H)		Co-Speakers signed.
5-10(S)		President signed.
5-16(H)		Governor signed.
		Chapter 58, (2011 Laws): Effective date January 1, 2012.

Note : All measure history information is considered unofficial until the formal revision process is complete and the record certified as accurate. The formal revision process is conducted upon adjournment sine die of the Seventy-Sixth Oregon Legislative Assembly

House Bill 2240

Sponsored by Representative MATTHEWS; Representatives BUCKLEY, DOHERTY (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Repeals sunset on provisions permitting employee who serves food or beverages, receives tips and reports tips to employer to waive meal period and prohibiting employer from coercing employee into waiving meal period.

A BILL FOR AN ACT

1
2 Relating to meal periods for tipped employees; amending ORS 653.261; and repealing section 3,
3 chapter 167, Oregon Laws 2007.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 653.261, as amended by section 2, chapter 167, Oregon Laws 2007, is amended
6 to read.

7 653.261. (1) The Commissioner of the Bureau of Labor and Industries may adopt rules prescrib-
8 ing such minimum conditions of employment, excluding minimum wages, in any occupation as may
9 be necessary for the preservation of the health of employees. The rules may include, but are not
10 limited to, minimum meal periods and rest periods, and maximum hours of work, but not less than
11 eight hours per day or 40 hours per week; however, after 40 hours of work in one week overtime
12 may be paid, but in no case at a rate higher than one and one-half times the regular rate of pay of
13 the employees when computed without benefit of commissions, overrides, spiffs and similar benefits.

14 (2) Nothing contained in ORS 653.010 to 653.261 shall be construed to confer authority upon the
15 commissioner to regulate the hours of employment of employees engaged in production, harvesting,
16 packing, curing, canning, freezing or drying any variety of agricultural crops, livestock, poultry or
17 fish.

18 (3) Rules adopted by the commissioner pursuant to subsection (1) of this section do not apply
19 to individuals employed by this state or a political subdivision or quasi-municipal corporation
20 thereof if other provisions of law or collective bargaining agreements prescribe rules pertaining to
21 conditions of employment referred to in subsection (1) of this section, including meal periods, rest
22 periods, maximum hours of work and overtime.

23 (4) Rules adopted by the commissioner pursuant to subsection (1) of this section regarding meal
24 periods and rest periods do not apply to nurses who provide acute care in hospital settings if pro-
25 visions of collective bargaining agreements entered into by the nurses prescribe rules concerning
26 meal periods and rest periods.

27 (5)(a) **The commissioner shall adopt rules regarding meal periods for employees who**
28 **serve food or beverages, receive tips and report the tips to the employer.**

29 (b) **In rules adopted by the commissioner under paragraph (a) of this subsection, the**
30 **commissioner shall permit an employee to waive a meal period. However, an employer may**
31 **not coerce an employee into waiving a meal period.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the
2 commissioner may assess a civil penalty not to exceed \$2,000 against an employer that the
3 commissioner finds has coerced an employee into waiving a meal period in violation of this
4 subsection. Each violation is a separate and distinct offense. In the case of a continuing vi-
5 olation, each day's continuance is a separate and distinct violation.

6 (d) Civil penalties authorized by this subsection shall be imposed in the manner provided
7 in ORS 183.745. All sums collected as penalties under this subsection shall be applied and paid
8 over as provided in ORS 653.256 (4).

9 SECTION 2. Section 3, chapter 167, Oregon Laws 2007, is repealed.

10

2011 Legislative Session
AGENCY FISCAL IMPACT STATEMENT FORM
(See instructions for completing form)

Please complete this form, and return one copy each to the Legislative Fiscal Office (LFO) and the Budget and Management Division (BAM).

Agency Name: Bureau of Labor and Industries
Preparer Name/Title: Terry Bonebrake, Fiscal Service Manager
Preparer Phone #: 971-673-0812
Date Submitted: 1/31/11

Measure #: HB 2240 Version: _____

- | | |
|---|--|
| <input checked="" type="checkbox"/> No fiscal impact | The absence of an expenditure or revenue (non-tax) impact. |
| <input type="checkbox"/> Minimal Impact | A fiscal impact that can be absorbed with existing agency resources. |
| <input type="checkbox"/> Fiscal Impact | A fiscal impact determined to be greater than a minimal fiscal impact. |

Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package? If yes, please identify the Policy Option Package name and number in your written analysis.

Yes _____ No X

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under Section 15, Article XI of the Oregon Constitution?

Yes _____ No X

AGENCY WRITTEN ANALYSIS:

Provide a high-level summary of the general requirements of the bill and what your agency will need to do to comply with the requirements. Identify any ambiguity or other issues related to the measure's language. Identify measure's effective date, and if applicable, operative dates. Summarize the methodology used to make fiscal calculations/determination. See instructions for other considerations.

HB 2240 repeals the sunset on legislation enacted in 2007 permitting tipped food and beverage service employees to waive their meal periods under certain conditions.

In accordance with the requirements of this legislation, the bureau adopted rules in 2008 implementing its provisions, and there has been no additional fiscal impact on the agency since then. No complaints alleging violations of this law have been received since its implementation, and no enforcement actions have been necessary or taken by the agency. Based on the history of this legislation, the agency anticipates no significant increase in enforcement activities in the future, and therefore, estimates there will be no fiscal impact on the agency.

AGENCY QUANTITATIVE ANALYSIS

Provide a detail description of the proposed legislation's effect on expenditures, revenues, and full time equivalent (FTE) positions. The table below is an embedded Excel worksheet. To fill out the form, place your mouse on the table; right click; select Worksheet Object and Open. If your analysis is number intensive, you may want to use just the Excel version of this template.

Effect on Expenditure (by Fund and Category):

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>TOTAL FUNDS</u>
2011-13 Biennium					
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -
Total	\$ -	\$ -	\$ -	\$ -	\$ -

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>TOTAL FUNDS</u>
2013-15 Biennium					
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -
Total	\$ -	\$ -	\$ -	\$ -	\$ -

Effect on Revenues (by Fund):

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>TOTAL FUNDS</u>
2011-13 Biennium	\$ -	\$ -	\$ -	\$ -	\$ -
2013-15 Biennium	\$ -	\$ -	\$ -	\$ -	\$ -

Effect on Position(s) / FTE(s):

<u>Months of Impact</u>		<u>2011-13</u>	<u>2011-13</u>	<u>2013-15</u>	<u>2013-15</u>
<u>2011-13</u>	<u>2013-15</u>	<u>Position Count</u>	<u>FTE</u>	<u>Position Count</u>	<u>FTE</u>

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass
Vote:	8 - 0 - 0
Yeas:	Conger, Doherty, Esquivel, Hoyle, Johnson, Matthews, Kennemer, Schaufler
Nays:	0
Exc.:	0
Prepared By:	Theresa Van Winkle, Administrator
Meeting Dates:	2/2

WHAT THE MEASURE DOES: Removes the sunset on provisions that allow tipped restaurant workers to voluntarily waive their meal period and that prohibit an employer from coercing such employees into waiving their meal period.

ISSUES DISCUSSED:

- Rationale behind waiving meal periods
- Process for restaurant workers to waive their meal period
- Zero complaints filed to, or sanctions issued by, the Bureau of Labor and Industries

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: Oregon statutes require employers to provide meal and rest periods for employees unless they are explicitly exempted. The meal period is to be taken in the middle of their work period, which is considered as the time frame between an employee beginning and ending work. For restaurant workers who receive tips, their meal period often coincides with their biggest opportunity to earn tips.

Senate Bill 403 (2007) directed the Bureau of Labor and Industries to adopt rules which allow tipped restaurant workers to voluntarily waive their meal periods, and that prohibit an employer from coercing affected employees into waiving a meal period. The measure also established a penalty of up to \$2,000 for violations. In the case of a continuing violation, each day's continuance is considered a separate and distinct violation.

House Bill 2240 removes the current sunset date of January 2, 2012.

2/7/2011 9:42:00 AM

This summary has not been adopted or officially endorsed by action of the committee.

REVENUE: No revenue impact
FISCAL: No fiscal impact

Action:	Do Pass
Vote:	6 - 0 - 0
Yeas:	Atkinson, Burdick, Edwards, Girod, Starr, Beyer
Nays:	0
Exc.:	0
Prepared By:	Richard Berger, Administrator
Meeting Dates:	4/26

WHAT THE MEASURE DOES: Removes the sunset on provisions that allow tipped restaurant workers to voluntarily waive their meal period and that prohibit an employer from coercing such employees into waiving their meal period.

ISSUES DISCUSSED:

- Busiest time is often in the middle of shifts in the restaurant business
- Process for restaurant workers to waive their meal period
- Zero complaints filed to, or sanctions issued by, the Bureau of Labor and Industries

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: Oregon statutes require employers to provide meal and rest periods for employees unless they are explicitly exempted. The meal period is to be taken in the middle of their work period, which is considered as the time frame between an employee beginning and ending work. For restaurant workers who receive tips, their meal period often coincides with their biggest opportunity to earn tips.

Senate Bill 403 (2007) directed the Bureau of Labor and Industries to adopt rules which allow tipped restaurant workers to voluntarily waive their meal periods, and that prohibit an employer from coercing affected employees into waiving a meal period. The measure also established a penalty of up to \$2,000 for violations. In the case of a continuing violation, each day's continuance is considered a separate and distinct violation.

House Bill 2240 removes the current sunset date of January 2, 2012.

**Enrolled
House Bill 2240**

Sponsored by Representative MATTHEWS; Representatives BUCKLEY, DOHERTY (Pre-session filed.)

CHAPTER

AN ACT

Relating to meal periods for tipped employees; amending ORS 653.261; and repealing section 3, chapter 167, Oregon Laws 2007.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 653.261, as amended by section 2, chapter 167, Oregon Laws 2007, is amended to read.

653.261. (1) The Commissioner of the Bureau of Labor and Industries may adopt rules prescribing such minimum conditions of employment, excluding minimum wages, in any occupation as may be necessary for the preservation of the health of employees. The rules may include, but are not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less than eight hours per day or 40 hours per week; however, after 40 hours of work in one week overtime may be paid, but in no case at a rate higher than one and one-half times the regular rate of pay of the employees when computed without benefit of commissions, overrides, spiffs and similar benefits.

(2) Nothing contained in ORS 653.010 to 653.261 shall be construed to confer authority upon the commissioner to regulate the hours of employment of employees engaged in production, harvesting, packing, curing, canning, freezing or drying any variety of agricultural crops, livestock, poultry or fish.

(3) Rules adopted by the commissioner pursuant to subsection (1) of this section do not apply to individuals employed by this state or a political subdivision or quasi-municipal corporation thereof if other provisions of law or collective bargaining agreements prescribe rules pertaining to conditions of employment referred to in subsection (1) of this section, including meal periods, rest periods, maximum hours of work and overtime.

(4) Rules adopted by the commissioner pursuant to subsection (1) of this section regarding meal periods and rest periods do not apply to nurses who provide acute care in hospital settings if provisions of collective bargaining agreements entered into by the nurses prescribe rules concerning meal periods and rest periods.

(5)(a) The commissioner shall adopt rules regarding meal periods for employees who serve food or beverages, receive tips and report the tips to the employer.

(b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commissioner shall permit an employee to waive a meal period. However, an employer may not coerce an employee into waiving a meal period.

(c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$2,000 against an employer that the commissioner finds has coerced an employee into waiving a meal period in violation of this

subsection. Each violation is a separate and distinct offense. In the case of a continuing violation, each day's continuance is a separate and distinct violation.

(d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS 183.745. All sums collected as penalties under this subsection shall be applied and paid over as provided in ORS 653.256 (4).

SECTION 2. Section 3, chapter 167, Oregon Laws 2007, is repealed.

Passed by House February 9, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 3, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State