

HB

545

SUMMARY: Intent of HB 545.

It has come to my attention that there are no current laws requiring employers of food service workers to provide a half-hour break for their employees during each shift.

There is also no federal or state law requiring an employer to provide employees with rest or meal periods during a work shift. However private employment agreements and collective bargaining contracts frequently require rest and meal periods and the Alaska Dept. of Labor will enforce those private agreements. Food service workers who do not have an employment agreement or collective bargaining contracts could then be required to work through a shift without having any break time.

The intent of this legislation is to implement by statute a break time requirement.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 11, 1984

SUBJECT: Requiring Rest or Meal Periods for Food Service Workers (Work Order No. 13-1626)

TO: Representative Barbara Lacher

FROM: Teresa B. Cramer
Legislative Counsel

Teresa B. Cramer 2450

You have requested information about any current laws requiring employers of food service workers to provide a half-hour break for their employees during each shift. You have also asked for recommendations about how to require those employers to provide a break-time for their employees.

There is no federal or state law requiring an employer to provide employees with rest or meal periods during a work shift. However, private employment agreements and collective bargaining contracts frequently require rest and meal periods and the Alaska Department of Labor will enforce those private agreements. Federal regulations under the Fair Labor Standards Act (29 U.S.C. 201 - 219) recognize that employment contracts may require employers to provide rest or meal periods and address how to consider those periods when computing overtime compensation. (A copy of 29 C.F.R. 785.18 and 785.19 is attached for your information.)

The state cannot adopt laws in a field which federal statutes have pre-empted. The Fair Labor Standards Act does not address rest or meal periods. It sets a floor below which states may not go in regulating minimum wages and overtime compensation. It permits states to provide greater protections for employees than those of the federal law provided that those protections do not conflict with or frustrate the purpose of the federal law. The act does not prohibit Alaska from adopting requirements about break times.

A break-time requirement should be implemented by statute rather than by regulation. Neither AS 23.10 (the Alaska

lf ne ne on th ei w k f er b C C G Su E 18- (y' al be nf o l eel s f at y n h let no e c mp prt ar for :1 S. v.) (4) :up d 1 J.S. 30 1. E 1. li 157 thll Cs 4,6t one 2.P. int

Representative Barbara Lacher

Page 2

January 11, 1984

Wage and Hour Act) nor AS 18.60.010 - 18.60.105 (prevention of accident and health hazards) speaks directly to this proposed requirement. The Wage and Hour Act establishes minimum wage and overtime compensation standards. AS 18.60.010 - 18.60.105 addresses the prevention of work-related accidents and health hazards. Since regulations providing for rest or meal periods would not directly flow from existing statutory language, the safer course to follow would be to establish the requirement by statute in general terms and permit regulations to be adopted to implement it.

TBC:lmb
L3/087

Attachment

§ 785.15 On duty.

A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employees while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employees who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his own purposes. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait. See: *Skidmore v. Swift*, 323 U.S. 134, 37 (1944); *Wright v. Carrigg*, 275 F. 2d 48, 14 W.H. Cases (C.A. 4, 1960); *Mitchell v. Wigger*, 39 Labor Cases, para. 66,278, 14 W.H. Cases 534 D.N.M. 1960; *Mitchell v. Nicholson*, 79 F. Supp. 292, 14 W.H. Cases 487 W.D.N.C. 1959))

§ 785.16 Off duty.

(a) *General.* Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

(b) *Truck drivers; specific examples.* A truck driver who has to wait at or near the job site for goods to be loaded is working during the loading period. If the driver reaches his destination

and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Washington, D.C. to New York City, leaving at 6 a.m. and arriving at 12 noon, and is completely and specifically relieved from all duty until 6 p.m. when he again goes on duty for the return trip the idle time is not working time. He is waiting to be engaged. (*Skidmore v. Swift*, 323 U.S. 134, 137 (1944); *Walling v. Dunbar Transfer & Storage*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Gifford v. Chapman*, 6 W.H. Cases 806; 12 Labor Cases para. 63,661 (W.D. Okla., 1947); *Thompson v. Daugherty*, 40 Supp. 279 (D. Md. 1941))

§ 785.17 On-call time.

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. (*Armour & Co. v. Wantock*, 323 U.S. 126 (1944); *Handler v. Thrasher*, 191 F. 2d 120 (C.A. 10, 1951); *Walling v. Bank of Waynesboro, Georgia*, 61 F. Supp. 384 (S.D. Ga. 1945))

REST AND MEAL PERIODS

§ 785.18 Rest.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

§ 785.19 Meal.

(a) *Bona fide meal periods.* Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purpose of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (*Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich. 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglas v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

(b) *Where no permission to leave premises.* It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

SLEEPING TIME AND CERTAIN OTHER ACTIVITIES

§ 785.20 General.

Under certain conditions an employee is considered to be working even though some of his time is spent in sleeping or in certain other activities.

§ 785.21 Less than 24-hour duty.

An employee who is required to be on duty for less than 24 hours is work-

ing even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator, for example, who is required to be on duty for specified hours is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is worktime. (*Central Mo. Telephone Co. v. Conwell*, 170 F. 2d 641 (C.A. 8, 1948); *Strand v. Garden Valley Telephone Co.*, 51 F. Supp. 898 (D. Minn. 1943); *Whitsitt v. Enid Ice & Fuel Co.*, 2 W.H. Cases 584; 6 Labor Cases para. 61,226 (W.D. Okla. 1942).)

§ 785.22 Duty of 24 hours or more.

(a) *General.* Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If sleeping period is of more than 8 hours, only 8 hours will be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked. (*Armour v. Wantock*, 323 U.S. 126 (1944); *Skidmore v. Swift*, 323 U.S. 134 (1944); *General Electric Co. v. Porter*, 208 F. 2d 805 (C.A. 9, 1953), cert. denied, 347 U.S. 951, 975 (1954); *Bowers v. Remington Rand*, 64 F. Supp. 620 (S.D. Ill. 1946), aff'd 159 F. 2d 114 (C.A. 7, 1946) cert. denied 330 U.S. 843 (1947); *Bell v. Porter*, 159 F. 2d 117 (C.A. 7, 1946) cert. denied 330 U.S. 813 (1947); *Bridgeman v. Ford, Bacon & Davis*, 161 F. 2d 562 (C.A. 8, 1947); *Rokey v. Day & Zimmerman*, 157 F. 2d 736 (C.A. 8, 1946); *McLaughlin v. Todd & Brown, Inc.*, 7 W.H. Cases 1014; 15 Labor Cases para. 64,606 (N.D. Ind. 1948); *Campbell v. Jones & Laughlin*, 70 F. Supp. 996 (W.D. Pa. 1947).)

(b) *Interruptions of sleep.* If the sleeping period is interrupted by a call to duty, the interruption must be

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 545
 Title: "...relating to rest or meal periods for food service workers"
 Sponsor: Representative Lacher
 Requestor: House Labor & Commerce
 Date of Request: 2/10/84

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
 Division: Labor Standards & Safety Date: _____

Approved by Commissioner: Jim Robinson Date: 2/16/84
 Agency: Labor

LEG:B:5
 Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

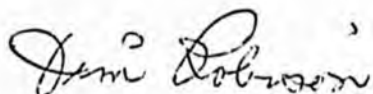
12/1/83

The Department of Labor is, from a safety and health standpoint, an advocate of the philosophy that workers need time away from their duties during the work shift, as provided for in House Bill 545. While there are presently no provisions in either state or federal law that require rest or meal periods for any class of worker, the absence of such provisions is premised upon the ability and good faith of employers and employees to negotiate suitable arrangements in this regard. This has been very workable and, generally, employers and employees do come to mutually acceptable terms on meal and rest periods. However, it appears that the food service industry has failed to satisfactorily police itself in this regard, and that workers in the industry are being denied the opportunity to negotiate for meal or rest periods which is commonly extended to workers in other industries.

Traditionally, a role of government has been to provide remedies to inequities when the more desirable self-regulating approach has failed. With this being the situation in the food service industry, it is, therefore, appropriate for government to assume the stronger role as provided for in House Bill 545.

The Department of Labor, therefore, supports passage of House Bill 545. It will not have a fiscal impact on the Department.

APPROVED:



Jim Robison
Commissioner

POSITION PAPER/Department of Labor



Hotel
Employees &
Restaurant
Employees Union



Local 879

Daniel E. Loring
Financial Secretary-Treasurer
Business Manager

909 First Avenue — Fairbanks, Alaska 99701
907-452-2332

Mark Rosen
President

— Farthest North Local —

6 February 1984

Rep. Niilo Koponen
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Koponen,

Local 879 is pleased to see the introduction of H.B. 545, and would like to be kept informed of its progress in the Labor and Commerce Committee. As this bill is presently written, is it intended to provide workers with either a meal or a 30 minute break, but not necessarily both? It would seem to be a curious result if employers provided a meal but required the employee to eat it while on shift.

Thank you for introducing this bill, and for sending us your comments or further information on it.

Sincerely,

Beth E. Behner
Business Agent, Local 879

P.S. Please let Rep. Ringstad know that his constituents favor this bill! *REB*



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 6, 1984

MEMORANDUM

TO: Representative Barbara Lacher

FROM: David Teal *Teal*
Legislative Analyst

RE: Meal Period for Food Service Workers
Research Request 84-057

You asked about state and federal laws and regulations pertaining to rest or meal periods for food service workers on an 8-hour shift. Alaska, like most states, defers to federal standards in lieu of state wage and hour regulation. Federal requirements for work breaks (except for minors) were abolished in the 1960s when equal pay and equal opportunity laws were adopted.¹

I spoke with Don Wilson and James Sanwick, both of the Alaska Department of Labor, about states that have adopted laws and regulations governing meal periods. Washington, Oregon, California and Hawaii are some of the states that have state wage and hour requirements in addition to federal requirements.

Hawaii requires employers to provide breaks to employees who are minors, but does not require breaks for adult workers. California requires employers to provide a meal period to workers in some fields, but food service workers are not on the list of occupations covered by the regulations. A copy of California's regulations governing meal periods is attached to this memorandum.

Employers that are covered by state regulation in Oregon must provide a 10-minute break (15 minutes for minors) twice a day and must provide a meal break within 5 hours of the beginning of a shift. Oregon's

¹Until the federal equal pay requirements were adopted, employers were required to provide breaks to women and children employees. Federal regulations no longer require employers to give adult employees rest or meal breaks, but they do require that employees be compensated for breaks of less than 20 minutes and meal periods of less than one-half hour.

Representative Lacher
Marh 6, 1984
Page 2

wage and hour regulations apply only to those businesses that have gross sales of less than \$362,000 per year and do not participate in interstate commerce. Over 90 percent of the employers in Oregon are covered by federal regulations.

Washington's administrative code requires employers to allow employees to take a meal break of at least 30 minutes no less than two hours and no more than five hours from the beginning of a shift. In addition, employees must receive a paid 10-minute break for each four hours of work. The provisions apply to all employers in the state.

Several people I spoke with stated that most food service workers are allowed to eat before, after or during their shifts, often for free. Several contacts mentioned that a requirement for a meal break might cause "during shift" meals to change from the traditional no cost and no lost hourly compensation situation. If food service workers in Alaska are given meal breaks, they may no longer be paid for the meal period and could be required to pay for any of the employers' food which is consumed.

If you wish us to perform a more extensive survey of states, please contact the agency.

DT

Attachment

MARCH 7, 1984

TO: JOHN
FROM: KEN
RE: HB 545

THE LANGUAGE IN HB 545 IS VERY SIMPLE, BUT IT PROPOSES ACTION WHICH IS UNPRECEDENTED IN ALASKA STATUTE. THIS LEGISLATION WOULD MANDATE THAT WORKERS IN THE FOOD SERVICE INDUSTRY BE GIVEN A 30 MINUTE REST OR MEAL PERIOD DURING WORK SHIFTS THAT LAST EIGHT HOURS OR MORE.

QUESTIONS:

1. WHY HAVE FOOD SERVICE WORKERS BEEN SINGLED OUT IN THIS BILL ?
2. HAS THIS TYPE OF LEGISLATION BEEN PASSED IN OTHER STATES ?
3. IS THERE ANY LAW ON THE FEDERAL LEVEL THAT MIGHT SUPPORT SUCH LEGISLATION ?
4. IF THIS LEGISLATION IS PASSED, DO YOU EXPECT A LARGE NUMBER ^{OTHER} OF WORKERS WILL WANT THE SAME PRIVILEGE ?.
WHO ?

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 545
 Title: "...relating to rest or meal periods for food service workers"
 Sponsor: Representative Lacher
 Requestor: House Labor & Commerce
 Date of Request: 2/10/84

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Macolas, Sr. Phone: 465-4870
 Division: Labor Standards & Safety Date: _____
 Approved by Commissioner: Jim Robinson Date: 2/16/84
 Agency: Labor

LEG:B:5
 Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

12/1/83

Bill No. House Bill No. 545

Date February 15, 1984

Title "An Act relating to rest or meal periods for food service workers."

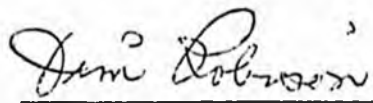
Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

The Department of Labor is, from a safety and health standpoint, an advocate of the philosophy that workers need time away from their duties during the work shift, as provided for in House Bill 545. While there are presently no provisions in either state or federal law that require rest or meal periods for any class of worker, the absence of such provisions is premised upon the ability and good faith of employers and employees to negotiate suitable arrangements in this regard. This has been very workable and, generally, employers and employees do come to mutually acceptable terms on meal and rest periods. However, it appears that the food service industry has failed to satisfactorily police itself in this regard, and that workers in the industry are being denied the opportunity to negotiate for meal or rest periods which is commonly extended to workers in other industries.

Traditionally, a role of government has been to provide remedies to inequities when the more desirable self-regulating approach has failed. With this being the situation in the food service industry, it is, therefore, appropriate for government to assume the stronger role as provided for in House Bill 545.

The Department of Labor, therefore, supports passage of House Bill 545. It will not have a fiscal impact on the Department.

APPROVED:



Jim Robison
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 545
 Title: "...relating to rest or meal periods for food service workers"
 Sponsor: Representative Lacher
 Requestor: House Labor & Commerce
 Date of Request: 2/10/84

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Macolas, Sr. Phone: 465-4870
 Division: Labor Standards & Safety Date: _____
 Approved by Commissioner: Jim Robinson Date: 2/16/84
 Agency: Labor

LEG:B:5

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83