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# A BILL FOR AN ACT

RELATING TO MEAL BREAKS FOR EMPLOYEES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that chapter 390, Hawaii  
2 Revised Statutes, has long protected the right of minors to an  
3 interval of at least thirty consecutive minutes for a rest or  
4 lunch period if they work for more than five consecutive hours.  
5 Furthermore, the legislature finds that Act 172, Session Laws of  
6 Hawaii 1999, made it illegal for an employer to prohibit an  
7 employee from expressing breast milk during any meal period or  
8 other break period required by law; however, state or federal  
9 wage and hour laws currently do not require employers to provide  
10 employees over the age of sixteen with any meal or rest period  
11 no matter how many consecutive hours they might be required to  
12 work. Employees who must work a full day or an eight-hour shift  
13 regardless of age or sex should not be denied a reasonable  
14 period of time to rest and consume a meal as commonly required  
15 by other states such as California, Oregon, and Washington.

16           The purpose of this Act is to require employers to provide  
17 scheduled meal breaks or rest periods for employees who work  
18 more than five consecutive hours.



1 SECTION 2. Section 387-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§387-3 Maximum hours. (a) No employer shall, except as  
4 otherwise provided in this section, employ any employee for a  
5 workweek longer than forty hours unless the employee receives  
6 overtime compensation for the employee's employment in excess of  
7 the hours above specified at a rate not less than one and one-  
8 half times the regular rate at which the employee is employed.

9 For the purposes of this section,

10 (1) "Salary" means a predetermined wage, exclusive of the  
11 reasonable cost of board, lodging, or other  
12 facilities, at which an employee is employed each pay  
13 period;

14 (2) If an employee performs two or more different kinds of  
15 work for the same employer, the total earnings for all  
16 such work for the pay period shall be considered to  
17 have been earned for performing one kind of work.

18 (b) The regular rate of an employee who is employed on a  
19 salary shall be computed as follows:

20 (1) If the employee is employed on a weekly salary, the  
21 weekly salary and the reasonable cost of board,



1           lodging, or other facilities, if furnished to the  
2           employee, shall be divided by forty.

3           (2) If the employee is employed on a biweekly salary, the  
4           biweekly salary and the reasonable cost of board,  
5           lodging, or other facilities, if furnished to the  
6           employee, shall be divided by two and the quotient  
7           divided by forty.

8           (3) If the employee is employed on a semi-monthly salary,  
9           the semi-monthly salary and the reasonable cost of  
10          board, lodging, or other facilities, if furnished to  
11          the employee, shall be multiplied by twenty-four, the  
12          product divided by fifty-two and the quotient divided  
13          by forty.

14          (4) If the employee is employed on a monthly salary, the  
15          monthly salary and the reasonable cost of board,  
16          lodging, or other facilities if furnished to the  
17          employee, shall be multiplied by twelve, the product  
18          divided by fifty-two and the quotient divided by  
19          forty.

20          (c) The regular rate of an employee who is employed on a  
21          salary and in addition receives other wages such as, but not  
22          limited to, commissions, bonus, piecework pay, and hourly or

1 daily pay shall be computed in the manner provided in this  
2 subsection. As used hereinabove, the term "other wages" shall  
3 not include the reasonable cost of board, lodging, or other  
4 facilities.

5 (1) If the employee's salary and the reasonable cost of  
6 board, lodging, or other facilities, if furnished to  
7 the employee, equal or exceed fifty per cent of the  
8 employee's total earnings for the pay period, the  
9 total earnings shall be reduced to a regular rate in  
10 the manner provided in paragraph (1), (2), (3), or (4)  
11 of subsection (b), whichever is applicable.

12 (2) If the employee's salary and the reasonable cost of  
13 board, lodging, or other facilities, if furnished to  
14 the employee, are less than fifty per cent of the  
15 employee's total earnings for the pay period, the  
16 total earnings shall be reduced to a regular rate in  
17 the manner provided in paragraph (1), (2), (3), or (4)  
18 of subsection (b), whichever is applicable, except  
19 that the actual number of hours worked in the workweek  
20 shall be substituted for the final divisor of forty.  
21 Such an employee shall receive overtime compensation  
22 for employment in excess of forty hours in a workweek



1           at a rate not less than one-half times the employee's  
2           regular rate.

3           (d) The regular rate of an employee whose compensation is  
4 based on other than salary shall be computed in the manner  
5 provided in paragraph (2) of subsection (c). The reasonable  
6 cost of board, lodging, or other facilities, if furnished to the  
7 employee, shall be included in computing the employee's regular  
8 rate. Such an employee shall receive overtime compensation for  
9 such employment in excess of forty hours in a workweek at a rate  
10 not less than one-half times the employee's regular rate.

11          (e) An employer,

12          (1) Who is engaged in agriculture and in the first  
13 processing of milk, buttermilk, whey, skim milk, or  
14 cream into dairy products, or in the processing of  
15 sugar cane molasses or sugar cane into sugar (but not  
16 refined sugar) or into syrup, or in the first  
17 processing of or in canning or packing any  
18 agricultural or horticultural commodity, or in  
19 handling, slaughtering, or dressing poultry or  
20 livestock; or

21          (2) Who is engaged in agriculture and whose agricultural  
22 products are processed by an employer who is engaged



1 in a seasonal pursuit or in processing, canning, or  
2 packing operations referred to in paragraph (1); or  
3 (3) Who is at any place of employment engaged primarily in  
4 the first processing of, or in canning or packing  
5 seasonal fresh fruits;

6 shall not be required to pay overtime compensation for hours in  
7 excess of forty in a workweek to any of the employer's employees  
8 during any of twenty different workweeks, as selected by the  
9 employer, in any yearly period commencing July 1, for employment  
10 in any place where the employer is so engaged. The employer,  
11 however, shall pay overtime compensation for such employment in  
12 excess of forty-eight hours in any such exempt workweek at the  
13 rate and in the manner provided in subsections (a), (b), (c) and  
14 (d), whichever is applicable, except that the word "forty-eight"  
15 shall be substituted for the word "forty" wherever it appears in  
16 subsections (b), (c), and (d).

17 (f) No employer shall employ any employee in split shifts  
18 unless all of the shifts within a period of twenty-four hours  
19 fall within a period of fourteen consecutive hours, except in  
20 case of extraordinary emergency.

21 (g) No employee employed by an employer who employs fifty  
22 or more employees shall be required to work more than five



1 continuous hours without a scheduled interval of at least thirty  
2 minutes for a rest or bona fide meal period as defined in Title  
3 29 Code of Federal Regulations Section 785.19, unless a  
4 collective bargaining agreement otherwise contains express  
5 provisions for employee meal breaks. This subsection shall not  
6 apply to any employer who is the operator of a continuously  
7 operating facility that is regulated by an environmental permit;  
8 provided that an on-duty meal period is provided.

9 [~~g~~] (h) This section shall not apply to any overtime  
10 hours worked by an employee of an air carrier subject to Title  
11 II of the Railway Labor Act, 45 U.S.C. [~~section~~] Section 181 et  
12 seq.; provided such overtime hours are the result of a voluntary  
13 agreement between employees to exchange work time or days off."

14 SECTION 3. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2012.

17

INTRODUCED BY: 



**Report Title:**

Employee Meal Breaks

**Description:**

Prohibits an employer who employs fifty or more employees from requiring its employees to work more than five continuous hours without a scheduled rest or meal period, unless a collective bargaining agreement otherwise contains provisions for employee meal breaks. Exempts employers who are the operators of a continuously operating facility that is regulated by an environmental permit, if an on-duty meal period is provided. Takes effect 7/1/2012.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

