

HOUSE BILL No. 2239

By Committee on Commerce, Labor and Economic Development

Requested by Carson Cruzeiro

1 AN ACT concerning labor and employment; requiring every employer to
 2 provide each employee with meal periods and rest periods; defining
 3 undue hardship as a significant difficulty or expense for the employer;
 4 allowing exemptions for meal periods under certain conditions, such as
 5 industry practice or unforeseeable circumstances; prohibiting the
 6 combination of rest and meal periods; allowing employees to waive
 7 meal periods under specific conditions, including written consent and
 8 the ability to revoke the waiver; prohibiting employer coercion in
 9 waiving meal periods; imposing penalties for violations, including fines
 10 up to \$2,000.

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12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) (1) Except as otherwise provided in this section, every
 14 employer shall provide each employee with a meal period of not less than
 15 30 continuous minutes during which the employee is relieved of all duties,
 16 including any duty to remain on the work premises. This requirement shall
 17 apply to each employee work period that is at least six hours but not more
 18 than eight hours.

19 (2) Except as otherwise provided in this section, if an employee is not
 20 relieved of all duties for 30 continuous minutes during the meal period, the
 21 employer shall pay the employee for the entire 30-minute meal period.

22 (3) An employer is not required to provide a meal period to an
 23 employee for a work period of less than six hours. When an employee's
 24 work period is more than eight hours, the employer shall provide the
 25 employee the number of meal periods as follows:

Length of work period	Number of meal periods required
2 hrs or less.....	0
2 hrs 1 min - 5 hrs 59 min.....	0
6 hrs.....	1
6 hrs 1 min - 10 hrs.....	1
10 hrs 1 min - 13 hrs 59 min.....	1
14 hrs.....	2
14 hrs 1 min - 18 hrs.....	2
18 hrs 1 min - 21 hrs 59 min.....	2

35

1 22 hrs.....3

2 22 hrs 1 min - 24 hrs.....3

3 (4) The meal period shall be taken between the conclusion of the first
4 hour worked and completed prior to the commencement of the final hour
5 worked.

6 (b) (1) If an employer does not provide a meal period to an employee
7 pursuant to subsection (a), the employer shall show that:

8 (A) To do so would impose an undue hardship on the operation of the
9 employer's business as provided in subsection (c) and that the employer
10 has complied with subsection (d);

11 (B) industry practice or custom has established a paid meal period of
12 less than 30 minutes but not less than 20 minutes, during which employees
13 are relieved of all duties; or

14 (C) such employer's business operation encountered unforeseeable
15 equipment failures, acts of nature or other exceptional and unanticipated
16 circumstances that only rarely and temporarily preclude the provision of a
17 meal period required under subsection (a). If an employee is not relieved
18 of all duties for 30 continuous minutes during the meal period, the
19 employer shall pay the employee for the entire 30-minute meal period.

20 (2) The exemption allowed under this subsection shall not be
21 applicable to employees under the age of 16.

22 (c) As used in subsection (b), "undue hardship" means significant
23 difficulty or expense when considered in relation to the size, financial
24 resources, nature or structure of the employer's business. To determine
25 whether providing a meal period requires significant difficulty or expense,
26 the following factors may be considered:

27 (1) The employer's cost of complying with the requirement to provide
28 a meal period under subsection (a);

29 (2) the overall financial resources of the employer;

30 (3) the number of persons employed at the particular worksite and
31 their qualifications to relieve the employee, the total number of persons
32 employed by the employer and the number, type and geographic
33 separateness of the employer's worksites; and

34 (4) the effect of providing the meal period required under subsection
35 (a) on worksite operations involving:

36 (A) The startup or shutdown of machinery in continuous-operation
37 industrial processes;

38 (B) intermittent and unpredictable workflow not in the control of the
39 employer or employee;

40 (C) the perishable nature of materials used on the job; and

41 (D) the safety and health of other employees, patients, clients or the
42 public.

43 (d) When an employer does not provide a meal period to an employee

1 pursuant to this section but qualifies for an exemption pursuant to
 2 subsection (b):

3 (1) The employer shall instead provide the employee adequate paid
 4 periods in which to rest, consume a meal and use the restroom; and

5 (2) the employer shall first provide to each employee a notice from
 6 the secretary of labor regarding rest and meal periods in the language used
 7 by the employer to communicate with the employee. The employer shall
 8 retain and keep available to the secretary a copy of the notice for the
 9 duration of the employee's employment and for not less than six months
 10 after the termination date of such employee. Notices that comply with this
 11 subsection shall be available upon request from the department.

12 (e) (1) Except as provided in paragraph (2), every employer shall
 13 provide to each employee for each segment, or a significant part thereof,
 14 of four hours worked in a work period a rest period of not less than 15
 15 continuous minutes during which the employee is relieved of all duties,
 16 except that such employee may be required to remain on the work
 17 premises without incurring a deduction from the employee's pay.

18 (A) As the nature of the work allows, the employer shall provide the
 19 rest period approximately in the middle of each segment, or a major part
 20 thereof, of four hours worked in a work period. When the employee's work
 21 period is more than eight hours, the employer shall provide the employee
 22 the number of rest periods as follows:

23 Length of work period	24 Number of rest breaks required
25 2 hrs or less.....	0
26 2 hrs 1 min - 5 hrs 59 min.....	1
27 6 hrs.....	1
28 6 hrs 1 min - 10 hrs.....	2
29 10 hrs 1 min - 13 hrs 59 min.....	3
30 14 hrs.....	3
31 14 hrs 1 min - 18 hrs.....	4
32 18 hrs 1 min - 21 hrs 59 min.....	5
33 22 hrs.....	5
34 22 hrs 1 min - 24 hrs.....	6

35 (B) The employer shall provide rest periods in addition to and taken
 36 separately from the time provided for a meal period. An employer may not
 37 require or allow an employee to add the rest period to a meal period or
 38 deduct the rest period from the beginning or end of the employee's work
 39 period to reduce the overall length of the work period.

40 (C) An employer has the burden to show that the employer provided
 41 the rest periods required under this section.

42 (2) An employer is not required to provide a rest period to an
 43 employee if all of the following conditions are met:

1 (A) The employee is 18 years of age or older;

2 (B) the employee works less than four hours in any period of 16
3 continuous hours;

4 (C) the employee is working alone;

5 (D) the employee is employed in a retail or service establishment
6 where goods that are not for resale and services are sold to the general
7 public; and

8 (E) the employee is allowed to leave such employee's assigned station
9 when necessary to use the restroom facilities.

10 (f) The provisions of this section regarding meal periods and rest
11 periods may be modified by the terms of a collective bargaining agreement
12 if the provisions of the collective bargaining agreement entered into by the
13 employees specifically prescribe rules concerning meal periods and rest
14 periods.

15 (g) (1) If an employer agrees, an employee may waive a meal period
16 if all of the following conditions are met:

17 (A) The employee is employed to serve food or beverages, receives
18 tips and reports the tips to the employee's employer;

19 (B) the employee is at least 18 years of age;

20 (C) the employee voluntarily requests to waive such employee's meal
21 periods not less than seven calendar days after beginning employment;

22 (D) the employee's request to waive the employee's meal periods is in
23 writing in the language used by the employer to communicate with the
24 employee, on a form provided by the secretary, and is signed and dated by
25 both the employee and employer;

26 (E) the employer retains and keeps available to the secretary a copy
27 of the employee's request to waive such employee's meal period during the
28 duration of such employee's employment and for not less than six months
29 after the termination date of the employee;

30 (F) the employee is provided with a reasonable opportunity to
31 consume food during any work period of six hours or more while
32 continuing to work;

33 (G) the employee is paid for any and all meal periods during which
34 the employee is not completely relieved of all duties;

35 (H) the employee is not required to work longer than six hours
36 without receiving a 30-minute meal period during which the employee is
37 relieved of all duties;

38 (I) the employer makes and keeps available to the secretary accurate
39 records of hours worked by each employee that clearly indicate whether or
40 not each such employee has received meal periods; and

41 (J) the employer posts a notice provided by the secretary regarding
42 rest and meal periods in a conspicuous and accessible place where all
43 employees can view such notice.

1 (2) Either the employer or employee may revoke the agreement for
 2 the employee to waive the employee's meal periods by providing to the
 3 other at least seven calendar days' written notice.

4 (3) Notwithstanding paragraph (2), an employee who has requested to
 5 waive meal periods under this section may request to take a meal period
 6 without revoking the agreement to waive such periods. The request to take
 7 a meal period shall be submitted in writing to the employer not less than
 8 24 hours prior to the meal period requested.

9 (4) An employer may not coerce an employee into waiving a meal
 10 period.

11 (5) An employer shall be considered to have coerced an employee
 12 into waiving the employee's meal period under the following
 13 circumstances:

14 (A) The employer requests or requires an employee to sign a request
 15 to waive meal periods;

16 (B) an employee is required to waive meal periods as a condition of
 17 employment at the time of hiring or at any time while employed;

18 (C) the employer requests or requires any person, including another
 19 employee, to request or require an employee to waive meal periods; or

20 (D) the employee signs a form requesting to waive meal periods prior
 21 to being employed for seven calendar days.

22 (6) Employee waiver forms and notices regarding rest and meal
 23 periods that comply with this section shall be available upon request from
 24 the department.

25 (h) (1) In addition to any other penalty provided by law, the
 26 commissioner may, pursuant to the Kansas administrative procedure act,
 27 assess a civil penalty of not to exceed \$2,000 against an employer that the
 28 commissioner finds has coerced an employee into waiving a meal period
 29 in violation of this subsection. Each violation is a separate and distinct
 30 offense. In the case of a continuing violation, each day's continuance is a
 31 separate and distinct violation.

32 (2) All moneys received under this subsection shall be remitted to the
 33 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
 34 amendments thereto. Upon receipt of each such remittance, the state
 35 treasurer shall deposit the entire amount in the state treasury to the credit
 36 of the state general fund.

37 (i) As used in this section:

38 (1) "Department" means the department of labor.

39 (2) "Employee" means someone who works in the service of another
 40 person under an express or implied contract of hire, under which the
 41 employer has the right to control the details of work performance.
 42 "Employee" does not include an independent contractor.

43 (3) "Independent contractor" means someone who is entrusted to

1 undertake a specific project but who is left free to do the assigned work
2 and choose the method for accomplishing such work.

3 (4) "Secretary" means the secretary of labor.

4 (5) "Work period" means the period between the time that the
5 employee begins work and the time the employee ends work. "Work
6 period" includes a rest period as provided in subsection (e) and any period
7 of one hour or less that is not designated as a meal period during which the
8 employee is relieved of all duties, even if required to remain on the work
9 premises. "Work period" does not include a meal period unless the meal
10 period is paid work time as provided in subsections (a) or (e).

11 Sec. 2. This act shall take effect and be in force from and after its
12 publication in the statute book.