

## **ComplianceHR - PolicySmart**

### **Illinois Amends Meal Break and Day of Rest Requirements--Now Includes Updated Policies Requires Policy Changes**

Posted October 17, 2022 - Illinois has amended provisions of the Illinois One Day Rest in Seven Act (ODRISA), which addresses both day of rest and meal break requirements for employees in the state. Fortunately for employers, the amendments do not take effect until January 1, 2023, so there is plenty of time for Illinois employers to make sure their policies and process conform to these changes, which are significant.

#### ***Day of Rest Changes***

First, the amendments revise the interval at which employees must receive a day off. Currently, a covered employee (for ODRISA's day-of-rest provisions, this means non-exempt employees) need only be provided one day of rest within any given calendar week. Thus, an employer is compliant if it schedules an employee to get Sunday off in week one, work the next 12 days, and then have the following Saturday off, as the employee would not work seven days in either calendar week. Under the new amendments, however, the employee must be given one day of rest in "every consecutive seven-day period." Therefore, beginning January 1, 2023, employers have to make sure that they provide this day of rest every rolling seven days or will otherwise have to obtain waivers from the Illinois Department of Labor to allow the employees to work more than six consecutive days.

#### ***Meal Break Changes***

Second, the amendments will provide for a 20-minute meal break for the first 7.5 hours worked, and then another 20-minute break for each additional 4.5-hour period worked after this initial 7.5-hour period. As the law and regulations currently stand, a second (or third) meal break is only provided for every additional 7.5-hour period. In other words, currently an employee must be scheduled to work 15 hours in order to be eligible for a second meal period. Beginning on January 1, 2023, that amount drops to 12 hours (7.5 plus 4.5). Unlike in many states, these time frames are absolute, so someone scheduled to work 11 hours would still only be entitled to one meal period.

#### ***Penalty Changes***

Third, the penalties for violations will increase effective January 1, 2023. Currently, a violation of ODRISA is a petty offense, punishable only by a fine of not less than \$25 or more than \$100 for each offense. Under the amendments, an employer that violates ODRISA will be subject to a civil penalty, which for employers of fewer than 25 employees may not exceed \$250 per offense, and for employers of 25 employees or more, may not exceed \$500 per offense. Further, under the amendments an employer that violates ODRISA will also be required to pay damages to affected employees, up to \$250 for employers of fewer than 25 employees, and up to \$500 for employers of 25 or more employees. Currently, employees have no right to recover any damages for a violation of ODRISA.

The amendments now state that the Illinois Director of Labor shall enforce ODRISA in accordance with the Illinois Administrative Procedure Act. However, Section 6 of ODRISA—which charges the director to enforce the provisions and prosecute all violations of ODRISA—is not impacted by the amendments. Therefore, it appears that employees will still not have a private right of action to enforce ODRISA, and must still go exclusively through the Illinois Department of Labor to file a complaint.

#### ***New Notice Requirement***

Finally, the amendments now require that employers post a notice summarizing the requirements of ODRISA and information on how to file a complaint with the Illinois Department of Labor. The Department will provide

such a notice. The Department currently has a poster on its website outlining the rights under ODRISA, though this reflects the current state of the law, not the amendments.

The notice requirement will expressly apply to remote workers, and can be provided by email or on a website that all employees are able to regularly access, freely and without interference. Failure to provide the notice will be deemed a civil offense subject to a penalty not to exceed \$250, but no damages are available to affected employees.

### ***Additional Takeaways for Illinois Employers***

The amendments do not address waivers of meal periods, and the law (both currently and after the amendments) requires only that employers “permit” employees to take meal breaks. As such, an employee may still voluntarily choose to work through a meal break rather than take an unpaid meal break. However, given that the amendments now provide for employees to recover damages for missed meal periods, many employers may now choose to require employees to take breaks, or at a minimum, ensure that there is sufficient documentation to show that it was an employee’s voluntary choice to miss a meal break, and that the employee was permitted to take any meal breaks requested. Failure to document this could result in substantial penalties to an employer.

Historically there have been relatively few complaints against employers for violations of ODRISA, which may be influenced by the fact that currently, employees have no monetary incentive to file complaints. After these amendments go into effect, we expect a significant uptick in complaints. Illinois employers should review their policies to make sure they comply with the changes to ODRISA effective January 1, 2023, and consider how they provide meal breaks, whether they permit waivers of meal breaks and how they document those waivers.

*The content in this post is from Darren M. Mungerson, [Illinois Amends One Day Rest in Seven Act, Adding Stricter Penalties and More Stringent Notice Requirements](#), Littler ASAP (May 26, 2022).*

## **REVISIONS TO SAMPLE POLICY**

### **Meal Breaks**

Employees who work **a shift of between seven and one-half** ~~or more consecutive hours~~ **and twelve consecutive hours** will be provided ~~at least~~ one 20-minute meal break, **to begin** no later than five hours after the start of work. **Employees who work a shift of between twelve and sixteen and one-half consecutive hours will be provided two 20-minute meal breaks, with the first to begin no later than five hours after the start of work. The second break will generally be taken after the beginning of the twelfth hour of work. Employees who work more than sixteen and one-half consecutive hours of work will be provided a third 20-minute meal period, and employees who work a shift in excess of twenty-one consecutive hours of work will be provided a fourth 20-minute meal period.** During the break, employees will be relieved of all duties. Reasonable time using restroom facilities will not be considered a meal period.

**[Include for employers with unionized employees: The above provision does not apply to employees for whom meal periods are established through the collective bargaining process.]**

An uninterrupted meal break lasting 30 or more minutes will be unpaid. **[OPTIONAL: All nonexempt employees must record their meal breaks.]**

Employees who are unable to take all of the meal breaks to which they are entitled in accordance with this policy, or who have been prevented or discouraged from taking a break to which they are entitled under this policy, should **immediately** notify a Human Resources representative [or insert name of appropriate company

representative or department] **immediately and, if possible, prior to the beginning of the fifth hour of work or other applicable time frames.**

**[OPTIONAL: All employees, both exempt and non-exempt, are provided meal breaks in accordance with this policy. The Company does not require exempt employees to record meal periods, but exempt employees who feel that they are being prevented from taking meal breaks are required to notify a Human Resources representative [or insert name of appropriate company representative or department] in accordance with the preceding paragraph].**

### **Meal Breaks for Minors Under 16 Years Old**

Employees who are younger than 16 years old and work more than five hours continuously will be provided an uninterrupted 30-minute meal break. During the break, employees will be relieved of all duties. An uninterrupted 30-minute meal break will be unpaid for nonexempt employees.

**[OPTIONAL: All nonexempt employees must record their meal breaks.]**

Any employee who is unable to take all the breaks to which they are entitled in accordance with this policy, or who has been prevented or discouraged from taking a break to which they are entitled under this policy, should **immediately** notify Human Resources **[or insert name/contact details for appropriate company representative or department] immediately and, if possible, prior to the beginning of the fifth hour of work.**

### **Mandatory Time Off/Day of Rest**

[Company Name] will provide nonexempt, nonsupervisory employees working more than 20 hours per week with at least one day (24 consecutive hours) of rest during every ~~calendar week~~ **consecutive seven-day period**. Certain exceptions may apply, including for [insert all that are relevant: watchmen or security guards, employees working in agriculture or coal mining; employees engaged in canning and processing of perishable agricultural products on a part-time or seasonal basis; and employees whose services are needed to prevent injury or damage in case of machinery breakdown or other emergency.]