

**House File 401 - Introduced**

HOUSE FILE 401

BY HUNTER, KEARNS, and MASCHER

**A BILL FOR**

1 An Act requiring employers to provide employees with meal  
2 periods and rest periods and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 84A.5, subsection 4, Code 2017, is  
2 amended to read as follows:

3 4. The division of labor services is responsible for the  
4 administration of the laws of this state under [chapters 88,](#)  
5 [88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92,](#)  
6 [and 94A,](#) and [section 85.68.](#) The executive head of the division  
7 is the labor commissioner, appointed pursuant to [section 91.2.](#)

8 Sec. 2. Section 91.4, subsection 2, Code 2017, is amended  
9 to read as follows:

10 2. The director of the department of workforce development,  
11 in consultation with the labor commissioner, shall, at the  
12 time provided by law, make an annual report to the governor  
13 setting forth in appropriate form the business and expense of  
14 the division of labor services for the preceding year, the  
15 number of remedial actions taken under [chapter 89A,](#) the number  
16 of disputes or violations processed by the division and the  
17 disposition of the disputes or violations, and other matters  
18 pertaining to the division which are of public interest,  
19 together with recommendations for change or amendment of the  
20 laws in [this chapter](#) and [chapters 88, 88A, 88B, 89, 89A, 89B,](#)  
21 [90A, 91A, 91C, 91D, 91E, 91F, 92,](#) and [94A,](#) and [section 85.68,](#)  
22 and the recommendations, if any, shall be transmitted by the  
23 governor to the first general assembly in session after the  
24 report is filed.

25 Sec. 3. NEW SECTION. **91F.1 Meal and rest periods —**  
26 **requirements.**

27 1. As used in this chapter, unless the context otherwise  
28 requires:

29 a. "Commissioner" means the labor commissioner appointed  
30 pursuant to section 91.2.

31 b. "Employee" means a natural person who is employed in this  
32 state for wages by an employer.

33 c. "Employer" means a person, as defined in section 4.1,  
34 who in this state employs for wages a natural person. An  
35 employer does not include a client, patient, customer, or

1 other person who obtains professional services from a licensed  
2 person providing the services on a fee service basis or as an  
3 independent contractor.

4 2. An employer shall provide an employee with appropriate  
5 meal periods and appropriate rest periods.

6 a. An appropriate meal period shall be a period of not less  
7 than thirty minutes during an employee's work period in which  
8 an employee works at least seven hours. The meal period shall  
9 be taken between the second and fifth hours. If an employee  
10 works more than seven hours, the meal period shall be taken  
11 between the third and sixth hours.

12 b. An appropriate rest period shall be a paid period of  
13 not less than ten minutes during every consecutive four-hour  
14 period of work taken by an employee approximately in the middle  
15 of each four-hour period. The rest period is in addition to a  
16 meal period, if applicable, and shall not be added to a meal  
17 period or deducted from the work period to reduce the overall  
18 length of the total work period.

19 3. An employer is not required to pay for a meal period  
20 if an employee is free from work duties during the employee's  
21 entire meal period. An employee shall be paid for the meal  
22 period if any of the following occur:

23 a. The employee is required or allowed to remain on duty.

24 b. The employee is required to be on-call at the work  
25 premises or designated worksite in order to be available to  
26 return to duty even if the employee is not called back to duty.

27 c. The employee is called back to duty during the employee's  
28 meal period even though the employee is not usually on-call  
29 during the meal period.

30 Sec. 4. NEW SECTION. 91F.2 Meal and rest periods —  
31 exemptions.

32 1. Meal and rest period requirements may be modified by the  
33 terms of a collective bargaining agreement if the collective  
34 bargaining agreement entered into by the employees prescribes  
35 specific terms concerning meal periods and rest periods.

1 2. Meal and rest period requirements apply to hourly paid  
2 and salary-paid employees. Management or employees involved  
3 in agricultural jobs are not required to have breaks or meal  
4 breaks. For the purposes of this section, agricultural jobs do  
5 not include work in the production of seed, limited to removal  
6 of off-type plants and corn tassels and hand-pollinating during  
7 the months of June, July, and August by persons ages fourteen  
8 and older.

9 3. Meal period requirements may be waived if an employer  
10 shows that the ordinary nature and circumstance of the work  
11 prevented the employer from establishing and maintaining a  
12 regularly scheduled meal period. The factors that may be  
13 considered regarding the waiver of the requirements are limited  
14 to the following:

15 a. The safety and health needs of employees, patients,  
16 clients, and the public.

17 b. The lack of other employees available to provide relief  
18 to an employee.

19 c. The cost involved in shutdown and startup of machinery in  
20 continuous operation of the industrial process.

21 d. The intermittent and unpredictable workflow not  
22 controlled by the employer or employee.

23 e. Unforeseeable equipment failures, emergencies, or acts  
24 of nature that require immediate and uninterrupted attention  
25 by an employee.

26 Sec. 5. NEW SECTION. 91F.3 Civil penalties.

27 1. Any employer who violates the provisions of this chapter  
28 or the rules adopted pursuant to this chapter is subject to a  
29 civil penalty of not more than one hundred dollars for each  
30 violation. The commissioner may recover the civil penalty  
31 according to subsections 2 through 5. Any civil penalty  
32 recovered shall be deposited in the general fund of the state.

33 2. The commissioner may propose that an employer be assessed  
34 a civil penalty by serving the employer with notice of such  
35 proposal in the same manner as an original notice is served

1 under the rules of civil procedure. Upon service of such  
2 notice, the proposed assessment shall be treated as a contested  
3 case under chapter 17A. However, to remain a contested case,  
4 an employer must request a hearing within thirty days of being  
5 served.

6 3. If an employer does not request a hearing pursuant  
7 to subsection 2 or if the commissioner determines, after an  
8 appropriate hearing, that an employer is in violation of this  
9 chapter or the rules adopted pursuant to this chapter, the  
10 commissioner shall assess a civil penalty which is consistent  
11 with the provisions of subsection 1 and which is rendered with  
12 due consideration for the penalty amount in terms of the size  
13 of the employer's business, the gravity of the violation,  
14 the good faith of the employer, and the history of previous  
15 violations.

16 4. An employer may seek judicial review of any assessment  
17 rendered under subsection 3 by instituting proceedings for  
18 judicial review pursuant to chapter 17A. However, such  
19 proceedings must be instituted in the district court of the  
20 county in which the violation or one of the violations occurred  
21 and within thirty days of the day on which the employer was  
22 notified that an assessment has been rendered. Also, an  
23 employer may be required, at the discretion of the district  
24 court and upon instituting such proceedings, to deposit the  
25 amount assessed with the clerk of the district court. Any  
26 moneys so deposited shall either be returned to the employer  
27 or be forwarded to the commissioner for deposit in the general  
28 fund of the state, depending on the outcome of the judicial  
29 review, including any appeal to the supreme court.

30 5. After the time for seeking judicial review has expired  
31 or after all judicial review has been exhausted and the  
32 commissioner's assessment has been upheld, the commissioner  
33 shall request the attorney general to recover the assessed  
34 penalties in a civil action.

35 Sec. 6. NEW SECTION. 91F.4 Duties and authority of

1 commissioner.

2 1. The commissioner shall provide further exemptions from  
3 the provisions in this chapter when reasonable.

4 2. In order to carry out the purposes of this chapter, the  
5 commissioner or the commissioner's designee, upon presenting  
6 appropriate credentials to the employer or agent of the  
7 employer, may do any of the following:

8 a. Inspect employment records relating to meal and rest  
9 periods for employees.

10 b. Interview an employer or employee or an agent of  
11 the employer or employee, during working hours or at other  
12 reasonable times.

13 3. The commissioner shall adopt rules pursuant to chapter  
14 17A to administer this chapter.

15 EXPLANATION

16 The inclusion of this explanation does not constitute agreement with  
17 the explanation's substance by the members of the general assembly.

18 This bill creates a new Code chapter 91F that requires an  
19 employer to provide an employee with appropriate meal periods  
20 and appropriate rest periods.

21 The bill states that an appropriate meal period shall be not  
22 less than 30 minutes during an employee's work period of at  
23 least seven hours. The meal period is to be taken between the  
24 second and fifth hours of the work or, if the employee works  
25 more than seven hours, between the third and sixth hours.

26 The bill states that an appropriate rest period shall be a  
27 paid period of not less than 10 minutes during every four-hour  
28 work period. The rest period is taken in the middle of the work  
29 period. The rest period is in addition to the meal period and  
30 cannot be added to the meal period or deducted from the work  
31 period to reduce the overall length of the total work period.

32 The bill defines an "employee" as a natural person who is  
33 employed in this state for wages by an employer. An "employer"  
34 is defined as a person, as defined in Code section 4.1, who  
35 employs a natural person for wages.

1 The bill provides that an employer is not required to pay for  
2 a meal period if an employee is free from work duties during  
3 the employee's entire meal period.

4 The bill allows three exemptions to the meal and rest period  
5 requirements. The first exemption is if the meal and rest  
6 period requirements are modified by the terms of a collective  
7 bargaining agreement. However, the exemption is valid only  
8 if the collective bargaining agreement entered into by the  
9 employees prescribes specific terms concerning meal periods and  
10 rest periods.

11 The second exemption states that meal and rest period  
12 requirements apply to hourly paid and salary-paid employees.  
13 However, management or employees involved in certain  
14 agricultural jobs are not required to have breaks or meal  
15 breaks.

16 The third exemption is if an employer shows that the ordinary  
17 nature and circumstance of the work prevented the employer from  
18 establishing and maintaining a regular scheduled meal period.

19 The bill provides civil penalties for violating the new  
20 Code chapter. An employer who violates the provisions shall  
21 be subject to a penalty of up to \$100 for each violation. The  
22 labor commissioner may recover the penalties under Code chapter  
23 17A contested case procedures. Any penalties recovered shall  
24 be deposited in the general fund of the state.

25 The commissioner may propose that an employer be assessed a  
26 penalty by serving the employer with notice of a penalty in the  
27 same manner as an original notice is served under the rules of  
28 civil procedure.

29 The bill provides the labor commissioner with the authority  
30 to provide further exemptions from new Code chapter 91F when  
31 reasonable. Also, the labor commissioner or the commissioner's  
32 designee may inspect employment records relating to rest  
33 periods for employees and interview an employer or employee or  
34 an agent of the employer or employee, during working hours or  
35 at other reasonable times. The bill requires the commissioner

H.F. 401

1 to adopt rules to administer the Code chapter.