

**BLOGS**

Department of Labor; Employment Law Updates; Wage & Hour

Employers with Illinois Employees Should Be Aware of the Amendments to the Illinois One Day Rest in Seven Act

On January 1, 2023, the amendments to the Illinois One Day Rest in Seven Act (“ODRISA”) took effect, and the changes are significant. Employers with one or more employees in Illinois should take note of these new amendments to avoid costly penalties.

New Rest Breaks

The amended ODRISA requires covered employers to provide non-exempt employees with a minimum of 24 hours of rest within every consecutive seven-day period. Prior to January 1, 2023, the ODRISA required employers to provide eligible employees with at least twenty-four consecutive hours of rest in every “calendar week,” which was defined as Sunday from 12:01 a.m. to midnight on the following Saturday.

The Illinois Department of Labor (“IDOL”) gave the following example on its website: An employee is scheduled to be off on Tuesday and work Wednesday through Monday. The employee must have that following Tuesday off because to work Wednesday through Tuesday is considered seven consecutive days.

New Meal Breaks

The amended ODRISA also requires employers to provide non-exempt employees with a meal period of at least 20 minutes for every 7.5-hour shift beginning no later than five hours after the start of the shift, with an additional 20-minute meal period if working a 12-hour shift or longer. Employers must also provide these employees with reasonable restroom breaks in addition to the meal break. Prior to January 1, 2023, the ODRISA required employers to give employees a 20-minute unpaid meal break for every 7.5 hours worked, to be provided within the first five hours of the 7.5-hour working period, which meant that employees would not be eligible for a second meal break unless they worked 15 hours.

The IDOL gave the following example on its website: A worker who is scheduled to work from 8 am to 8 pm must be allowed to take a first meal break before 1 pm; and a second meal break before 6 pm.

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Permits for Exceptions

The law allows employers to secure permits from the IDOL for employees to work on the seventh day, provided that employees have voluntarily agreed to work and are paid at the applicable overtime rate if employees work over 40 hours per week. As part of the permit application, employers must certify that all employees who work on the seventh day are doing so voluntarily.

The first application an employer submits can request for employees to work seven days a week for a maximum of eight weeks in any one year. If an employer wants employees to work seven days a week for more than eight weeks in any one year, the employer must submit a second application to the IDOL. The IDOL will not grant the second application unless it finds that the need for the employment of such persons on their designated day of rest cannot be remedied by increasing the number of employees or by adjusting production schedules. The IDOL will consider business necessity and economic viability when granting such permits.

IDOL must receive the permit applications no later than the Friday preceding the first effective day of the permit.

To whom does the law apply?

The Act defines "employer" as a person, partnership, joint stock company or corporation, which employs any person to work, labor or exercise skill in connection with the operation of any business, industry, vocation or occupation. The Act applies to employees who work in Illinois, so it applies to employers with one or more employees in the state – including employees who work remotely from Illinois.

The Act does not apply to:

- Part-time workers (20 hours or less in a week)
- Workers who are needed in the event of a breakdown of machinery or equipment (or any other type of emergency requiring immediate services of experienced labor to prevent injury to persons, damage to property, or suspension of necessary operation)
- Agriculture or coal mining workers
- Employees in canning and processing perishable agricultural products if employed seasonally and for not more than 20 weeks during any calendar year or 12-month period
- Security guards or watchmen
- Exempt employees under the Fair Labor Standards Act or supervisors under the National Labor Relations Act
- Crew members on an uninspected towing vessel operating in any navigable waters in or along the boundaries of the State of Illinois.

What are the new posting requirements?

The Act requires employers to post the notice provided by the IDOL (and keep such notice posted) in one or more conspicuous spaces where notices are customarily posted. The IL Department of Labor provides the poster [here](#). The poster also includes the information needed for the Wage Payment and Collection Act, Child Labor Law, Minimum Wage Law, Equal Pay Act, Victims' Economic Security and Safety Act and the One Day Rest in Seven Act. For employees who work remotely or travel, employers are required to provide the notice via email or on a website "regularly used by the employer to communicate work-related information, that all employees able to regularly access, freely and without interference."



What are the penalties for violation of the ODRISA?

If an employer is found in violation of the Act, it could be fined by the IDOL and be civilly liable to pay damages to the effected employees. Fines and damages are assessed by each separate offense. Each day a meal period is not provided to an employee, and each consecutive seven-day period in which an employee is not provided with 24 hours off constitute a separate offense per employee.

The fines and damages are not something to ignore – they can add up and be significant. Employers with less than 25 employees are subject to damages payable to the employee of up to \$250 per offense and a penalty payable to the Department of up to \$250 per employee per offense. Employers with 25 or more employees are subject to damages payable to the employee of up to \$500 per offense and a penalty payable to the Department of up to \$500 per worker per offense.

An employer's violation of the posting requirements will constitute a single offense and subject the employer to civil fines to the IL Department of Labor up to \$250.

Where can I find more information?

The IDOL posted helpful questions and answers regarding the act [here](#).

Employer Considerations

Employers with Illinois employees should review their scheduling policies and practices to ensure they are in compliance with the amended ODRISA.

If an employer has employees who wish to voluntarily waive their break, it may be wise for the employer to have the employees sign a waiver indicating the employee's choice to do so. This is not a requirement under the law; rather, it may afford the employer protection from employees who may try to claim otherwise. Employers may also consider waivers for employees who wish to waive their meal periods. Contact a Lathrop GPM attorney if you need assistance in seeking a permit from the IDOL or preparing employee waivers.

Contact a Lathrop GPM attorney if you have any questions or concerns about the amended ODRISA or any of your employment policies and practices. We are here to help.