

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Section 707 (19 **Del.C.** §707)

GENERAL NOTICE

1327 Rules Relating to Exemptions from Meal Break Requirement

***Please note that the following regulation was adopted prior to the effective date of the current Administrative Procedures Act. The following is presented for informational purposes only.**

Background: The Rules Relating to Exemptions from Meal Break Requirement were adopted March 17, 1993, by Secretary Darrell J. Minott. The regulations were adopted in compliance with the Administrative Procedures Act ("APA"), 29 **Del.C.** §§10101 *et seq.* For unknown reasons the regulations were never incorporated into the Administrative Code during the period of transition in the latter part of the 1990s to the current APA system. Therefore, this notice serves to announce that the Rules Relating to Exemptions from Meal Break Requirement will be added to Title 19 of the Administrative Code.

1327 Rules Relating to Exemptions from Meal Break Requirement

Pursuant to the provision of 19 **Del.C.** §707(a), the Secretary of Labor hereby promulgates the following rules relating to exemptions from the meal break requirements of the statute.

1.0 Introduction

On July 10, 1992, Senate Bill 143 (as amended by Senate Amendment No. 1) was signed into law. It is codified at 19 **Del.C.** §707(a). The law requires that employers allow employees a meal break of at least thirty (30) consecutive minutes to employees who will be working seven and one-half (7 1/2) consecutive hours. The break must be given some time after the first two hours of work and before the last two hours. The break need not be a paid break. However, employees must be completely relieved from their duties during the break and the break time is to be free and uninterrupted time.

2.0 Exemptions

- 2.1 Although the law provides that the following types of employees do not have to be given a meal break of at least thirty (30) consecutive minutes, the employer must allow the employee to eat meals at their work stations or other authorized locations and to use restroom facilities as reasonably necessary. Employees covered by these exemptions must be compensated for the time spent eating at their work stations and using restroom facilities.
 - 2.1.1 Adverse effects on public safety. The thirty-minute break requirement does not apply in cases where compliance would adversely affect public safety. Compliance would "adversely affect public safety" when there is a possibility that injury, harm or damage could occur to any person or property if an employee were to be given the statutory thirty-minute break.
 - 2.1.2 Single employee duties. The thirty-minute meal break requirement does not apply in cases where only one employee performs the duties of a position. This exemption applies when there is only one person reasonably available to perform the duties of a position.
 - 2.1.3 Fewer than five workers on a shift. The thirty-minute meal break requirement does not apply in cases where an employer has fewer than five employees on a shift at a single place of business. "Place of business" means a single integrated operating or functional unit at a single geographical location. This exemption applies only to the shift on which fewer than five employees are working.
 - 2.1.4 Employer's continuous operations. The thirty-minute meal break requirement does not apply in cases where the continuous nature of an employer's operations, such as chemical production, research experiments or health care services requires employees to respond to urgent or unusual conditions at all times. Likewise, employers operating consecutive, non-overlapping shifts may provide meal breaks of no less than twenty (20) consecutive minutes if employees are compensated for all such meal breaks.

3.0 Retaliation

Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department of Labor regarding a violation of these rules, or because he/she caused to be instituted or is about to cause to be instituted any proceedings under this sections, or has testified or is about

to testify in such proceedings shall be deemed in violation of this section and be subject to an administrative penalty of not more than \$1,000 for each such violation. 19 **Del.C.** §707(b).

Approved this 17th day of March, 1993
Darrell J. Minott, Secretary of Labor

21 DE Reg. 56 (07/01/17) (Gen. Notice)