

# VOID WHERE PROHIBITED

---

**ILR Press** AN IMPRINT OF  
**Cornell University Press**

ITHACA AND LONDON

---

*REST BREAKS AND  
THE RIGHT TO URINATE  
ON COMPANY TIME*

**Marc Linder and Ingrid Nygaard**

GRAP

HD

5712

.L561

1999

Copyright © 1998 by Marc Linder and Ingrid Nygaard

BUR

All rights reserved. Except for brief quotations in a review, this book, or parts thereof, must not be reproduced in any form without permission in writing from the publisher. For information, address Cornell University Press, Sage House, 512 East State Street, Ithaca, New York 14850.

First published 1998 by Cornell University Press.

Printed in the United States of America

Cornell University Press strives to utilize environmentally responsible suppliers and materials to the fullest extent possible in the publishing of its books. Such materials include vegetable-based, low-VOC inks and acid-free papers that are also either recycled, totally chlorine-free, or partly composed of nonwood fibers.

Library of Congress Cataloging-in-Publication Data

Linder, Marc.

Void where prohibited : rest breaks and the right to urinate on company time / Marc Linder and Ingrid Nygaard.

p. cm.

Includes bibliographical references and index.

ISBN 0-8014-3390-8 (cloth : alk. paper)

1. Rest periods. 2. Hours of labor. 3. Employee rights. I. Nygaard, Ingrid. II. Title.

HD5112.L5G 1997

331.25'76—dc21

97-35049

Cloth printing 10 9 8 7 6 5 4 3 2 1

## Women at Rest: The Legal Status of Rest Periods Before Title VII

These minute definitions, which regulate the period, limits, pauses of work with military uniformity by the stroke of the clock, were in no way products of parliamentary imagination. They developed gradually out of the relations, as natural laws of the modern mode of production. Their formulation, official acknowledgment, and state proclamation were the result of protracted class struggles.

Karl Marx, *Das Kapital* (1867)

Contrary to popular assumption, protective legislation of women workers was not constructed as a means of liberating women. . . . Rather, it was designed to keep women in the home.

Ava Baron, "Protective Labor Legislation and the Cult of Domesticity," *Journal of Family Issues* (1981)

Although, contrary to a widespread misconception, a significant body of state and federal statutes did regulate men's work hours before the New Deal, from their inception in the late nineteenth century most meal- and rest-period laws covered women only. Like the movement for shorter hours in general, the campaign for respite within the working day was part of workers' resistance to the acceleration of the pace and resulting "over-fatigue" of industrialized work, which prompted demands for a redistribution of the leisure made both possible and necessary by greater productivity.<sup>1</sup> By the middle of the twentieth century, a majority of the states mandated meal periods, rest periods, or both for female employees.

Many white male workers and their unions may have remained skeptical of state intervention to shorten their working hours and improve their working conditions right into the New Deal era. Moreover, historical orthodoxy has not been wrong to emphasize that the bulk of such inter-

ventions largely and on their face targeted women (and child) workers. Nor was it necessarily in even those workers' interests: feminists have astutely interpreted women's labor-protective legislation "as an attempt to mediate the contradiction, under capitalism, between the need to reproduce the labor force (which . . . is based on the domestic labor of the wife . . .) and the desire of capital to use women's labor to the limits of human endurance as cheap, relatively unskilled wage labor."<sup>2</sup>

Fitting and useful as these insights are, they nevertheless fail to capture the full socioeconomic and historical import of the functions of and struggles over rest periods. Struggles over labor standards legislation in the United States, for example, do not follow the same pattern as those in Victorian Britain, where Parliament refrained from interfering, in the power-blind words of one of the founders of marginalist economics, "with the liberty of adult men to work as long or as short a time as they like." In the United States, in contrast, the surprising variety and proliferation of state and federal laws protecting either men alone *de facto* or all workers equally underscore the vitality of the view, currently held only by a minority, that women and men both supported hours laws, demonstrating that not "only women were denied the freedom to make their own contracts." To be sure, men may have had mixed motives in supporting restrictions on women's hours—both to render women as competitors "less desirable as employees" and indirectly to reduce their own hours where their work interlocked with women's—but, as the reformer Florence Kelley noted at the turn of the century, "whatever the motive . . . the real gain has always been leisure for all concerned."<sup>3</sup>

The "gendered strategy" of using laws for women to supersede the aspirational but unenforceable ten- and eight-hour state statutes of universal coverage that had "proven worthless" from the 1840s to the 1870s "was understood to embrace men *de facto*."<sup>4</sup> Thus women's statutes gained organized workmen's support because, in the United States as earlier in Britain, men expected that these laws would operate as opening wedges, just as unskilled workers had benefited from the reductions secured by their skilled coworkers through collective bargaining. In Massachusetts, for example, when the country's first ten-hour statute for women and children was enacted in the 1870s, a contemporary economist who opposed the legislation observed, "It is not denied by its promoters that the true object of this act is, to limit factory labor for adult men as well as for women and children to ten hours, as it is well understood . . . that it will be impossible to operate textile factories beyond the time permitted for women to work, since they constitute the larger portion of the factory operatives."

A half century later, when the National Consumers' League prevailed before the U.S. Supreme Court in vindicating the constitutionality of a state hours laws covering all manufacturing employees, "it had become clear to friends and enemies alike that the league was using women as an entering wedge—that is, it fashioned gender-specific constituencies and gender-specific issues to accomplish class-specific goals." Early post-World War I empirical studies conducted by the U.S. Women's Bureau continued to confirm that "the reduction of hours for women has in many cases given the men a 'free ride' to shorter working hours themselves."<sup>5</sup>

A brief review of hours limitation legislation follows here in order to provide a framework for the book's focus—rest periods. During the pre-New Deal period, the regulation of the working hours of adult males in the private sector may have been "fragmentary," but as Margaret Dreier Robins, the president of the National Women's Trade Union League, noted in 1920, they protected many men in a large number of states. These statutes were gender-neutral in form, but since the occupations they covered were virtually all-male, they were in effect men's protective statutes. First, some workers were prohibited from working more than a prescribed number of hours not so much for their own sake but for an instrumental reason—to protect the health and safety of the general public, which they could harm if they became fatigued. Chief among these workers were railway operating employees, bus drivers, seamen, and drug clerks. Indeed, the principal federal statute of this type, enacted in 1907, was expressly titled "An Act To promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon." A heightened risk of worker self-injury alone was apparently insufficient to impel the state to intervene in managerial prerogatives. However, this Hours of Service Act was guided by the insight that "the length of hours of service has direct relation to the efficiency of the human agencies upon whom protection of life and property necessarily depend."<sup>6</sup>

To be sure, even railway hours laws were sometimes "so defiantly and persistently violated by companies . . . as to drive the employees into striking in order to enforce the obedience of their employers to the terms of the law." Nevertheless, today the 1907 statute still prohibits railroad carriers from requiring or allowing "a train employee to remain or go on duty (1) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours; or (2) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty." In determining what time was to count as "on duty," Congress provided that "an interim period available for rest at a place other

than a designated terminal” and “an interim period available for less than 4 hours rest at a designated terminal [are] time on duty.” In other words: “The statute was intended to promote the safety of employees and the traveling public by affording sufficient time for recreation and rest, so that small periods during their hours of duty for meals would not offer any opportunity for rest as contemplated.” And courts still interpret the statute in this spirit: “any time spent by an employee that denies him adequate opportunity for rest or that detracts from the rest that he has received must be treated in a way that enhances safety in operating a moving train.”<sup>7</sup>

Second, many states enacted hours limitations for workers in “obviously dangerous or unhealthful employments” such as mines, smelters, and tunnels. Third, a few states conferred protection on workers in “less obviously dangerous employments . . . in which investigation prove[d] . . . a direct correlation between the hours worked and the safety and health of the employees.” Such places of employment included telephone switchboards, sugar refineries, retail stores (Montana), and brickyards (New York).<sup>8</sup> Finally, the most interesting gender-free intervention took the form of blanket bans on overtime in all of manufacturing or in the textile mills that formed the bulk of manufacturing in the South. These statutory regimes in Georgia (1889), South Carolina (1892), Mississippi (1912), Oregon (1913), and North Carolina (1915) survived until surprisingly recent years.

The Oregon statute, contrary to most constitutional law scholars’ understanding, neither established a ten-hour work day for manufacturing employees nor was “the one general hours law” in the early twentieth century. Rather, as Elizabeth Brandeis correctly noted, it was “very ineffective” since it merely limited the working day to thirteen hours, imposing a time-and-a-half premium on the employer for the last three hours.<sup>9</sup> Nevertheless, with the Oregon law, still in effect today, the legislature expressed as “public policy . . . that the working of any person more than 10 hours in one day, in any mill, factory or manufacturing establishment is injurious to the physical health and well-being of such person, and tends to prevent him from acquiring that degree of intelligence that is necessary to make him a useful and desirable citizen of the State.” In upholding the constitutionality of the statute, the Oregon Supreme Court embellished this principle, taking judicial notice that “it requires no argument that a man who day in and day out labors more than 10 hours must not only deteriorate physically, but mentally.” Yet even though the “safety of a country” and the preservation of its institutions depended on avoiding that “mental deterioration,” the court blithely confirmed that “the law does not prevent the laborer from working as many hours per day as he sees fit” — that is,

so long he received a 50 percent premium for the eleventh to thirteenth hours or worked for several employers.<sup>10</sup>

Persistently overlooked is the more radical 1912 Mississippi statute that made it a misdemeanor to work employees more than ten hours in manufacturing. In rejecting an employer's constitutional challenge to the statute, which remained on the books until 1981, the Mississippi Supreme Court took implicit judicial notice that long hours and increasing intensity of labor tend to be irreconcilable: "when we consider the present manner of laboring, the use of machinery, . . . and the general present day manner of life, which tends to nervousness, it seems to us quite reasonable . . . to pass such law so limiting a day's labor." Georgia, South Carolina, and North Carolina also enacted less sweeping gender-neutral hours-limitations laws. Inspired in part by labor union advocates, these statutes were so weakly enforced that hours remained very long.<sup>11</sup>

Separate from hours limitation laws were state rest-period laws, which were of three types. The first prohibited the employment of workers—for example, by railways—for more than a prescribed number of hours within a set period, such as ten hours per day in twelve consecutive hours or more than sixteen consecutive hours within twenty-four hours. The other two were primarily but not exclusively confined to women. Day-of-rest statutes prohibited the employment of workers more than six days per week. The last type, which forms the focus of this book, required work pauses during the day for meals, rest, or both. This kind of state-imposed break was relatively underdeveloped in the United States in the late nineteenth century, when the fifteen-minute breaks that one bold woman worker dared to appropriate for herself "were unheard of."<sup>12</sup>

Although the first wave of state meal-period statutes dates from the mid-1880s, customary meal periods had been known for decades in some factories. In the eastern states the "appallingly long" fourteen- or fifteen-hour workdays of the 1830s to 1850s might be interrupted for thirty minutes for breakfast and as much as an hour for dinner—even if "with the boarding-houses almost a part of the mills, the meal hour should be considered as part of the operatives' day." Nevertheless, as early as the 1840s, Andrew Combe, a British physician, observed in *The Physiology of Digestion* that in general "nowhere does [man] bolt his food so much as if running a race against time" as in the United States, and that in particular among factory workers, "who are allowed only a few minutes for meals, indigestion is very prevalent." By 1850 a committee of the Massachusetts House of Representatives, appointed to inquire whether legislation should be adopted to limit the hours in large manufacturing establishments "to better secure

to the laboring classes proper time for relaxation and rest," reported that "Prominent, among the evils growing out of the long protracted hours of labor in the factories, and which have a bearing upon the question of health, is the short time allowed for meals." Citing Combe, the committee suggested that the forty-five minutes allotted in many textile mills be doubled for physiological reasons.<sup>13</sup>

In 1936 John Commons and John Andrews could still report in their standard treatise:

The most common form of legal requirement for daily rest periods in private employments is found in the laws regulating hours of labor for women. A number of states merely specify that from one-half to one hour shall be allowed for the noon meal. Under such laws as do not restrict the number of hours of continuous employment, women have been employed, with no time for rest and meals, for periods so long as to be definitely harmful to their health. Several states, therefore, make the provision more effective by prescribing that the noon rest period shall be given after five or six hours' work. . . . Most of the laws apply to all females . . . but the inclusion of adult men workers is very rare.

In addition to the noon rest period, a few employers have voluntarily granted to employees, especially women, a fifteen- or twenty-minute rest in the middle of the morning and again in the afternoon; but no legal regulations to this effect exist in America. In European countries, however, the beneficial effects of these shorter breaks in the workday have been recognized in legislative enactments.<sup>14</sup>

In examining these and other early labor laws it is important to bear in mind that contrasts between a golden—or paternalistic, as some may now judge—era of women's protective legislation and the current free-market regime are misleading, for conniving employers frequently overrode statutory protections and reinstated their labor-market power. In the latter part of the nineteenth century, when women began to replace men as shop clerks, in large part because they were paid less, employers imposed a "rule that they should stand at their counters during the whole of the business hours, although there might not be a single customer in the store . . . to impress the possible purchaser with the alertness and readiness of service." To deal with the "wanton cruelty" of forcing women to stand twelve to fourteen hours a day, states soon enacted seat laws, which employers frequently violated.<sup>15</sup> In 1910, for example, the U.S. Commissioner of Labor reported to Congress that

The Illinois statutes contain a law requiring employers to provide seats for women employees. Many of the department store employers obey this law to the letter. They provide seats. But the seat does not help a woman much unless she is allowed to use it. Most of the women say that they are closely watched, and are reprimanded by the floor man if they sit down, even though they are not busy. . . . In one of the leading stores a certain section was provided with seats. . . . The head of the section . . . solved the problem by circulating among the women a paper upon which they were asked to sign a statement that they would not use the seats. The majority, fearing the loss of their positions, signed the circular.<sup>16</sup>

While such machinations were nonsensical—and superfluous in states such as New York, where employers provided seats, “but the well-known penalty of occupying them is instant discharge,” or where employers placed the onus on pieceworkers to dock themselves if they left work to sit down—they are simply another version of OSHA’s refusal to require employers to permit their workers to sit on the toilets that it requires them to provide.<sup>17</sup> Unenforced gender-biased protective laws were the worst of both worlds: they embellished the paternalistic ideology that projected women as weak without offering any compensating material benefit. Thus during World War I an investigator discovered that violation of the seat law in Pennsylvania textile mills was “omnipresent.” And as late as World War II, an official of the United Automobile Workers was still complaining that 85 percent of firms in states requiring seats for women ignored them, forcing the union to use the grievance machinery of its collective bargaining agreements to vindicate its female members’ statutory rights.<sup>18</sup>

The first meal-period law, enacted in Michigan in 1885, mandated at least an hour “in the labor period” for dinner for women and children employed in factories. The statute enacted in Massachusetts in 1887, perforated though it was by numerous exemptions, prohibited employers from employing children or women in factories or workshops with five or more such employees for more than six hours at one time without a half-hour interval for a meal. The purpose of this “nooning” statute was to make it more difficult for employers to violate the state’s ten-hour statute for women and children in textile factories, which, as amended in 1886, had required employers to post the time to be taken for dinner but had failed to mandate any specific time for meals. Such additional measures became necessary because, as the chief of the Massachusetts police agency responsible for enforcing the law noted: “Capital, sensitive to the last degree, is naturally inclined to evade or at least to overlook legislative restrictions

which seem to put its very existence at the mercy of competitors in other jurisdictions, in which there is more scope for profit, apparently." By requiring that all women (and children) who began work at the same time take their meal period at the same time, and prohibiting these workers from doing the work of any of their protected coworkers during the meal-time, the law was designed to prevent the practice of "stealing on time." By the turn of the century it was reported that the meal-period mandate was being successfully enforced.<sup>19</sup>

The more stringently worded New York law, enacted a month after the Massachusetts statute, was the first of several to demonstrate that coverage of men under meal-period laws, though hardly the norm, was not quite so rare as Commons and Andrews suggested. Although part of a statute to regulate the employment of women and children in manufacturing establishments, it stated that "Not less than forty-five minutes shall be allowed for the noon day meal" at such workplaces. According to the *New York Times*, the new factory law "occasioned great excitement in labor circles." In 1892 the meal period was extended to an hour. And in 1909 its applicability to both sexes was underscored by the phrasing: "In each factory at least sixty minutes shall be allowed for the noon-day meal." In that year the legislature also required an additional twenty-minute meal period for those working at least one hour of overtime after 6:00 P.M.<sup>20</sup>

Enforcement of the New York statute, however, apparently left much to be desired. In 1906 the social investigator Mary Van Kleeck reported that many female factory workers were still working twelve- to fourteen-hour days punctuated by as little as thirty minutes for meals. One reason for the inadequate enforcement of hours laws was that workers who testified against their employers were frequently fired. The economic coercion available to employers in such industries is visible in Van Kleeck's characterization of the employment relation: "When one side can say to the other . . . 'Work or starve,' the contract is not free." The importance that Progressives attached to industrial meal periods was inscribed in the guiding principles of the newly founded Consumers' League, which aspired to raise consumers' consciousness of the impact of their purchases on "how our fellow-men shall spend their time in making what we buy." Among the conditions on which consumers were to insist as "decent and consistent with a respectable existence on the part of the workers" was a 9¼-hour day in addition to forty-five minutes for lunch.<sup>21</sup>

Although in the 1920s the gender-neutral universality of the New York meal-period law appeared "unique" to scholars, other states had in fact followed suit. The 1899 Indiana statute mandating sixty minutes for all

manufacturing and mercantile workers, for example, was not repealed until 1971. In 1901 Pennsylvania required at least a forty-five-minute meal period for all manufacturing workers, which in 1905 became one hour for all workers outside coal mining, agriculture, and domestic employment. Louisiana, too, enacted a meal-break/rest-period statute of restricted scope, which, though geared toward women, was applicable to men. Finally, in 1911 New Jersey extended its meal-period law to all factory workers, requiring a half-hour break after six hours of work.<sup>22</sup>

In the years before World War I a number of states began enacting or amending factory laws to include rest-period provisions that may or may not have been meant to coincide with meal periods. The years 1911 to 1913 in particular produced an unprecedented volume of labor legislation of all types. In 1912 Maryland amended its ten-hour law for women in manufacturing and other establishments to clarify that it was unlawful to employ them six hours continuously without at least a half-hour interval. The following year Pennsylvania enacted a comprehensive women's labor statute, which mandated, in separate sections, both a forty-five-minute lunch period and a forty-five-minute interval between work periods after no more than six continuous hours of work. Also in 1913, Delaware's labor-protective statute for women similarly required a forty-five-minute interval after six hours of continuous work; although employers were obliged to post a notice of the hours for the meal recess, the statute did not specify its duration. As a result of this burst of legislation, by 1915 thirteen states and the District of Columbia had mandated thirty- to sixty-minute meals periods for women.<sup>23</sup>

During World War I, when an increased number of women entered the heavy industry workforce, the War Labor Policies Board mandated all federal contracts to require compliance with state labor laws.<sup>24</sup> Using this procedure as a basis for "upbuilding of standards for women's labor," in December 1918 the Woman in Industry Service of the U.S. Department of Labor recommended standards for the employment of women, which it called on the industries of the country to maintain as part of the post-war reconstruction program. The agency justified the greater control over women's labor standards by citing their weaker economic position and the need "to make it impossible for selfish interests to exploit them as unwilling competitors in lowering standards . . . which are for the best interests of the workers, the industries, and the citizenship of the country." Nevertheless, Mary Van Kleeck, who had become the director of the service, emphasized shortly before the end of the war that it was important to equalize standards between men and women. As adopted by the War Labor

Policies Board, the standards provided that in addition to at least a forty-five-minute meal period, women be given a ten-minute rest period in the middle of each working period without lengthening the working day.<sup>25</sup>

Despite the subsequent proliferation of state break-period laws, they remained far from universally adopted. By 1929 thirteen states mandated a lunch period of thirty to sixty minutes for women; similarly, twelve states (and the District of Columbia), including nine of the thirteen meal-period states, prohibited employers from working women more than five or six hours without a meal or rest period.<sup>26</sup> Yet if surveys conducted by the Women's Bureau of the Department of Labor in the 1920s are to be credited, state meal-period regulation must have been superfluous, since virtually no female worker even in states where they had no such legal protection had to make do with less than thirty minutes, let alone do without a meal period at all. The agency reported that a survey of establishments in thirteen states did "seem to indicate the prevalence of a reasonable" lunch period. Only nine of 1,709 reporting establishments scheduled lunch periods of less than thirty minutes; even fewer, three, allowed no definite lunch period at all. As a result, almost half (47 percent) of the 162,512 female employees were scheduled for one-hour lunch periods, while 36 percent were scheduled for thirty minutes and 13 percent for forty-five minutes; only 1 percent were scheduled for less than thirty minutes or allowed no definite lunch period. Thus even among women workers in the states of the deep South (in such traditional sweated trades as clothing production) and in the eleven of thirteen states without meal-period laws no problem surfaced. Women's Bureau studies of other states generated similar results.<sup>27</sup>

The fact that the agency collected the data—which referred to "scheduled" as opposed to actual hours—exclusively from employers, managers, and foremen may have subverted the integrity of the survey and accounted for the surprising humanitarianism found. The agency itself inadvertently revealed the possibility of self-serving self-reporting, commenting that "since the Delaware law provides 30 minutes as a minimum for lunch, this was the shortest schedule reported by any establishment."<sup>28</sup> More direct evidence of noncompliance with the prescribed meal periods was collected by a survey of working-class mothers in Philadelphia shortly after World War I. It noted that since the Pennsylvania statute did not require power machines to be disconnected during lunchtime, many piece-rate workers resumed their work as soon as they finished eating in order to increase their output. In states without statutory meal periods conditions may have been even worse. A study of female textile mill employees in

Rhode Island in 1918 revealed that a tenth of the women on the night shift had to work straight through without any meal period at all.<sup>29</sup>

In some jurisdictions employers were able to justify shortening the statutory meal period by citing employees' preferences. In Pennsylvania the factory inspectors at the beginning of the century recognized the wish of the majority as "good cause" for permitting thirty- instead of sixty-minute lunch periods. The employees' real motives were revealing. For example, where no lunch room was provided and employees were forced to eat at their benches, they reported that "we get sick of the odor and the look of the room, and want to get away from it as soon as we can. Of course, if we had any place to go to at noon . . . it might be different. We don't think of it as noon to rest in. We just know that it doesn't take us an hour to eat lunch, and we want to get to work again and get through as soon as we can." However, as an industrial survey investigator observed, "the law of the body is not modifiable at the wish of a majority of the employes, nor in the service of industrial convenience. . . . The period necessary for eating a cold lunch at the work bench is by no means sufficient to enable the worker, with nervous loss restored, to go back . . . in the afternoon as good a worker as . . . in the morning. The time of rest may be reduced, but . . . at the expense of the employes' strength and efficiency." Employers' failure to provide lunch rooms also prompted workers elsewhere to opt for a shorter meal period in order to leave earlier.<sup>30</sup>

Other evidence as well suggests that employers were not reconciled to the imposition of meal periods. The Wisconsin Industrial Commission, for example, discovered in 1918 that some employers had reduced meal periods from sixty to thirty minutes. Ironically, these arch-antipaternalists grounded their unlawful actions in part by claiming that the shorter time "was more conducive to [women's] . . . moral well-being [because] they were exposed to moral hazards of every kind during the noon period if they did not return to work as soon as they had eaten."<sup>31</sup>

By 1937 twenty-one states and the District of Columbia and Puerto Rico mandated a meal or rest period (including four that extended the meal provision to men), seventeen of these jurisdictions requiring the break after a maximum of five or six hours. During the Depression, four western states—California (1932), Oregon (1937), Utah (1937), and Colorado (1938)—added to their meal-period provisions the first modern rest-period regulations: by industrial welfare or industrial commission order, they specified a short break, not designated for eating, during each half of the workday. Oregon not only mandated forty-five-minute rest periods for women working six continuous hours in manufacturing, but prohib-

ited the employment of women for more than six continuous hours in mercantile occupations without a ten-minute rest period during each half day. Utah mandated ten minutes of rest for every four hours that women worked not only in retail occupations, but also in any establishment where employees had to be relieved by a special worker before leaving the "line of duty." Colorado confined the ten-minute rest during each four-hour period to the retail trade and laundries, while California as early as 1932 began requiring ten-minute relief periods every two hours in any occupation or industry that required continuous standing. During the war, Washington State mandated quarter-hour rest periods during each four- to five-hour shift for women in the canning and packing industries.<sup>32</sup>

A study of firms employing women in war industries conducted by Princeton University in 1941 concluded that "too little consideration" had been given to the fact that an "adequate rest pause in the middle of the day's work and time to eat a nourishing meal are both vitally important factors in sustaining the workers' health and productivity." Although management at all the firms considered thirty minutes to be "the satisfactory minimum" lunch period, one-fifth allowed only fifteen or twenty minutes. Even management at these latter plants, most of which provided neither cafeterias nor lunch carts, thus forcing workers to eat at their work stations, conceded to "know[ing] it is not a good arrangement." Although "the need of regular rest pauses morning and afternoon would seem to be increased as the lunch period is shortened," only one-fifth of the respondents had a regular rest period for all female production workers.<sup>33</sup>

Many states introduced "a degree of flexibility" into their women's hours laws in order to reconcile them with "the demands for production for a world war." Nevertheless, the "Recommendation on Hours of Work for Maximum Production" that the eight U.S. Government agencies responsible for the war program issued in 1942 stated: "A 30-minute meal period in mid-shift is desirable for men and women from the standpoint of the worker's health and from the standpoint of productivity." When the Women's Bureau reported the following year that "essential work standards for the protection of woman wage earners are being alarmingly disregarded in some quarters," the secretary of labor called a conference on Employment of Women in Wartime, which adopted a resolution endorsing the aforementioned standards including "adequate rest and meal periods." By the end of World War II, twenty-seven states and the District of Columbia mandated twenty- to sixty-minute meal periods for women in some or all industries. At a time when an industrial consultant was as-

setting that women's inborn anemia had prompted firms to give them rest periods, no new states joined the four (Indiana, Nebraska, New Jersey, and New York) that had protected men for decades.<sup>34</sup>

The development of nonmeal rest periods was, in contrast, retarded. Even during the war—when physicians were praising rest pauses, referring to their universality in England, and noting that even the U.S. Army gave its infantry ten to fifteen minutes of rest during each hour of marching—surveys still confirmed that “regular rest pauses are infrequent in American industry.” Some employers that did provide special rest periods for female employees justified them with precisely the type of paternalistic condescension that had prompted some feminists to prefer formal equality. One of the “Eleven Tips on Getting More Efficiency Out of Women Employees” that a mass transportation trade magazine passed on to its readers in 1943 read: “Give every girl an adequate number of rest periods durings [sic] the day. Companies that are already using large numbers of women stress the fact that you have to make some allowance for feminine psychology. A girl has more confidence and consequently is more efficient if she can keep her hair tidied, apply fresh lipstick and wash her hands several times a day.”<sup>35</sup>

Nevertheless, at war's end, the U.S. Women's Bureau was constrained to note: “Despite the fact that a 10- or 15-minute rest period midway in each 4-hour shift is a common industrial practice, only 2 States at the beginning of the war had a midshift rest-period requirement for women employed in general manufacturing. From a health standpoint, present labor legislation could be greatly strengthened by the requirement of 15 minutes' rest in each 4-hour work period.” To close the “significant gaps or omissions,” the Women's Bureau recommended as “future standards for labor legislation for women” both a thirty-minute lunch period and a ten-minute rest period during every four-hour work period.<sup>36</sup>

At the end of World War II the Women's Bureau made the gender-independent observation that “science has established that work not only uses up the energy of the body but also generates certain poisons which debilitate the worker” and can be “removed . . . only by rest.” Based on this physiological claim, the bureau argued that whereas at one time rest-period and other similar legislation had generally been regarded as “an altruistic effort to improve the condition of one group of the population,” the capacity of rest to neutralize fatigue now demonstrated that the improved working conditions made possible by such laws were also “a good business proposition.” Nevertheless, as late as the mid-1950s, a

leading industrial management expert was still of the gender-biased opinion that prescribed rest periods were “particularly successful with women workers.”<sup>37</sup>

At midcentury, in addition to the twenty-seven states plus the District of Columbia and Puerto Rico that mandated meal periods for female workers, eight states also prescribed two rest periods for women, ranging in length between five and fifteen minutes. In 1947 Nevada became the first state to mandate rest periods by statute (rather than by administrative agency order), when the legislature required all private employers to provide their female employees (except those in the communication industry) a ten-minute rest period within the first four hours and a second ten-minute rest period during the last four hours of work. The following year Arizona ordered two ten-minute rest breaks for women in the laundry and dry cleaning industry. And in 1949 Wyoming statutorily prescribed two fifteen-minute rest periods in virtually all industries for women who were required to be on their feet continuously. In addition, several of the western states, including California, Oregon, and Washington, which had initiated the wave of enactments during the Depression, expanded the scope of their regulations to include virtually all of industry.<sup>38</sup>

The significance of statutory protection for women workers is clear; as late as 1959, almost one-tenth of collective bargaining agreements with rest-period provisions restricted coverage to women only, while many others specifically mentioned women. Typical clauses in contracts in the 1940s, for example, bore such titles as “Rest Periods for Women Only,” “Rest Period for All Employees During First Half of Shift and for Female Employees Only, During Second Half,” “Female Piecework Rates Allow for 2 Rest Periods Daily,” and “Female Employee Not to Receive Rest Period Unless She Is on Duty for More Than Three Consecutive Hours.” A U.S. Bureau of Labor Statistics analysis of union agreements in 1942 found that rest periods were “usually limited to women and those men whose jobs are physically oppressive or who cannot leave their posts for short intervals without a substitute.” Examples of gender-biased benefits are the two ten-minute rest periods that the fiber division of the FMC Corporation included in its agreement with the Textile Workers in 1945, and a similar provision inserted into a 1951 agreement by the International Paper Company. Even though in the Hawthorne study five times as many men commented positively on their rest periods as negatively, while among women the ratio was three-to-one, many managers and public policy formulators continued to believe that only women needed them.<sup>39</sup>