REST BREAKS AND
THE RIGHT TO URINATE
ON COMPANY TIME

Marc Linder and Ingrid Nygaard
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### State rest- and meal-period laws

<table>
<thead>
<tr>
<th>State</th>
<th>Year of first enactment of non-gendered rest-period law</th>
<th>Length in minutes</th>
<th>Restrictions</th>
<th>Year of first enactment of non-gendered meal-period law</th>
<th>Length in minutes</th>
<th>Restrictions</th>
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</table>
| California⁴    | 1974                                                     | 10 every 4 hours  |                                                                             | 1974                                                     | 30 after 5 hours  | • Parties may waive period if work of not more than 6 hours will complete day’s work  
|                |                                                          |                   |                                                                             |                                                          |                   | • Paid on-duty meal period lawful when nature of work prevents relieving employee of all duty and parties agree in writing |
| Colorado²      | 1978                                                     | 10 every 4 hours  | Covers only retail, restaurant, hotel, medical service, beauty service, laundry, and janitorial workers | 1978                                                     | 30 after 5 hours  | • Same as rest-period law  
|                |                                                          |                   |                                                                             |                                                          |                   | • Paid on-duty meal period lawful when nature of work prevents employee from being relieved of all duties |
| Connecticut³   | 1989                                                     | 30 during workday of at least 7.5 consecutive hours |                                                                             |                                                          |                   | • Exempts employers with respect to position that may be performed only by 1 employee  
<p>|                |                                                          |                   |                                                                             |                                                          |                   | • Exempts employers with fewer than 5 employees on a shift at single place of business or with continuous operations requiring employees to respond to unusual conditions |
|                |                                                          |                   |                                                                             |                                                          |                   | • By written agreement employer and employee may provide for different schedule |</p>
<table>
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<tr>
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<th>Length in minutes</th>
<th>Restrictions</th>
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<tbody>
<tr>
<td>Delaware</td>
<td>1992</td>
<td>30</td>
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<td>1992</td>
<td>30 during workday of at least 7.5 consecutive hours</td>
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<tr>
<td>Hawaii</td>
<td>1949</td>
<td>45</td>
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<tr>
<td>Illinois</td>
<td>1974</td>
<td>20</td>
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<td>1974</td>
<td>at least 7.5 continuous hours</td>
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<tr>
<td>Kentucky</td>
<td>1974</td>
<td>10 every 4 hours</td>
<td>No enforcement of right to rest period</td>
<td>1974</td>
<td>“Reasonable period” between 3rd and 5th hours of work</td>
<td>Does not negate provision of collective bargaining agreement or mutual agreement between employer and employee</td>
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<tr>
<td>Maine</td>
<td>1985</td>
<td>30 after no more than 6 consecutive hours of work</td>
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<tr>
<td>Massachusetts</td>
<td>1974</td>
<td>30 during workday of more than 6 hours</td>
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<td>Length in minutes</td>
<td>Restrictions</td>
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<tr>
<td>Minnesota</td>
<td>1988</td>
<td>10 every 4 hours</td>
<td>Expressly for using rest room</td>
<td>1989</td>
<td>“Sufficient time to eat a meal” during workday of at least 8 consecutive hours</td>
<td>Collective bargaining agreement may provide for different meal periods</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1931</td>
<td>30</td>
<td>Applies only to assembling plants, workshops, and mechanical establishments, but excludes 3-shift operations</td>
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</tbody>
</table>
| Nevada           | 1974                                                   | 10 every 4 hours  | • Excludes 1-employee workplaces and those covered by collective bargaining agreements  
• Labor commissioner may grant exemptions for business necessity | 1974                                                   | 30 for continuous period of 8 hours of employment | Same as rest-period law |
| New Hampshire    | 1975                                                   | 30 after 5 consecutive hours of work | Not required if it is feasible for employee to eat while working and employer permits him or her to do so |
| New York         | 1887                                                   | 60 in factories (de facto only 30), elsewhere 30 | • Labor commissioner may grant variance of 20 minutes  
• Employee alone on duty may waive right |
| North Dakota     | 1991                                                   | 30 in shift exceeding 5 hours | • Excludes 1-employee shifts  
• Employee must “desir[e]” break |
| Oregon           | 1971                                                   | 10 every 4 hours  | • Excludes agricultural employees and adults working alone and for less than 5 hours in retail/service establishments selling to public (if employee allowed to leave to relieve self of body wastes)  
• No penalties or enforcement | 1971                                                   | 30 for work period of not less than 6 hours | • Excludes agricultural employees  
• Paid eating period is lawful if employer shows nature of work prevents relieving employee from all duty  
• Industry practice of 20-29 paid minutes is lawful  
• No penalties or enforcement |
<table>
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<tr>
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<th>Year of first enactment of non-gendered rest-period law</th>
<th>Length in minutes</th>
<th>Restrictions</th>
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</thead>
<tbody>
<tr>
<td>Pennsylvania</td>
<td>1978</td>
<td>30 every 5 hours</td>
<td>Covers only seasonal farmworkers</td>
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<tr>
<td>Puerto Rico</td>
<td>1935</td>
<td>60</td>
<td>Shorter period permissible for convenience of and with stipulation by employee and approval of secretary of labor</td>
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<tr>
<td>Rhode Island</td>
<td>1981</td>
<td>20 for workday of at least 6 hours</td>
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<tr>
<td>Tennessee</td>
<td>1993</td>
<td>30 for workday of at least 6 consecutive hours</td>
<td>• Can also be used as unpaid rest break</td>
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<td></td>
<td>• Exempts workplaces that by nature of business provide ample opportunity to rest or take appropriate break as well as those where breaks would adversely affect public health, safety, or welfare</td>
</tr>
<tr>
<td>Washington</td>
<td>1976</td>
<td>10 every 4 hours</td>
<td>• Does not require employees to take rest, only that they be allowed to do so and that they not be required to work more than 3 hours without rest period</td>
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<tr>
<td></td>
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<td></td>
<td>• Scheduled rest periods not required where nature of work allows workers to take intermittent rest periods equivalent to 10 mins/4 hrs</td>
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<td>1976 30 after no more than 5 consecutive hours, plus another 30 minutes if hours exceed 11</td>
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<tr>
<td>West Virginia</td>
<td>1934</td>
<td>20 during workday of at least 6 hours</td>
<td>Does not apply where employees are afforded necessary breaks and/or permitted to eat while working</td>
</tr>
</tbody>
</table>
### Appendix 1

<table>
<thead>
<tr>
<th>State</th>
<th>Year of first enactment of non-gendered rest-period law</th>
<th>Length in minutes</th>
<th>Restrictions</th>
<th>Year of first enactment of non-gendered meal-period law</th>
<th>Length in minutes</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wisconsin</td>
<td>1977</td>
<td>10 every 5 hours</td>
<td>Covers only migrant workers not employed exclusively in agriculture</td>
<td>1977</td>
<td>30 for workday of 6 consecutive hours unless shift can be completed in 7 hours</td>
<td>Covers only migrant agricultural workers, who cannot be &quot;required&quot; to work without meal period</td>
</tr>
</tbody>
</table>

**Sources:**
23. Wis. Stat. Ann. §§ 103.395(2) & (3) (West 1995). By a purely precatory regulation of general applicability, "[i]t is recommended that each employer allow each employee, 18 years of age or over, at least 30 minutes for each meal period reasonably close to the usual meal period time." Wis. Admin. Code § 274 02(2) DWD (1997).
Percentage of employees not receiving paid rest periods, 1979–1993

<table>
<thead>
<tr>
<th>Year</th>
<th>Medium/large establishments</th>
<th>Small establishments</th>
<th>State/local government</th>
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</thead>
<tbody>
<tr>
<td>1979</td>
<td>25</td>
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<td>1980</td>
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<td>1981</td>
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<td>1982</td>
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<td>1983</td>
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<td>1984</td>
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<td>1986</td>
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<td>1987</td>
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<td>42</td>
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<td>1988</td>
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<td>1989</td>
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<tr>
<td>1990</td>
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<td>52</td>
<td>44</td>
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<td>1991</td>
<td>33</td>
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<tr>
<td>1992</td>
<td></td>
<td>51</td>
<td>47</td>
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<tr>
<td>1993</td>
<td>32</td>
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</tbody>
</table>

Notes

Chapter 1. Introduction: From “Let Them Eat Cake” to “Let Them Pee in Their Pants”


3. Telephone interview with Adrian Markowitz, safety and health director, Retail, Wholesale, & Department Store Union, New York City (Jan. 4, 1996).


8. In re Sintermet Corp. & International Union, Allied Industrial Workers of America, Local 510, 95 Lab. Arb. (BNA) 978 (1991) (Lexis) (quote); Der Sozialdemokrat, No. 37, Sept. 7, 1882, at [4] (no pagination). The Japanese occupation army regulated “[e]very detail” of the lives of the Chinese whom they conscripted for labor service during World War II—“even the length of the time for passing water. The men soon learned to wet as large an area as possible, whenever they had to urinate, for a small spot on the ground was regarded as proof of malingered and could lead to a beating.” William Hinton, Fanshen: A Documentary of Revolution in a Chinese Village 75 (1966).


12. 1948 P.R. Laws No. 379, § 1 at 1254.


17. Telephone interviews with Ron Gumeringer; Jane Walstedt, Office of Policy Analysis, U.S. Women’s Bureau, Washington, DC (Jan. 29, 1996); Mary Ellen Grace, director, Div. of Labor Standards, Tennessee Dept. of Labor, Nashville, TN (Jan. 29, 1996); Walter Johnson, deputy commissioner, Div. of Labor Services, Dept. of Employment Services, Des Moines, IA (Oct. 27, 1995) (all confirming that their agencies receive numerous calls asking this question). By the same token, an Iowa state OSHA compliance officer, when asked whether workers had a right to a rest period, offered the nonsensical suggestion that the caller contact the National Labor Relations Board. Telephone interview (Oct. 1995).


all but one of which applied exclusively to women; by 1982, only nine jurisdictions had valid (degendered) seating regulations; later one of these states repealed its statute, leaving only seven valid state seat laws. U.S. BLS, *Time of Change: 1983 Handbook on Women Workers* 188 (Bull. 298, 1983); U.S. Women's Bureau, 1993 *Handbook on Women Workers: Trends and Issues* 191–92 (1994). Ronnie Ratner, "The Paradox of Protection: Maximum Hours Legislation in the United States," 119 *Int'l Lab. Rev.* 185, 186 (1980), erroneously states that "maximum hours laws were the most widespread of all the sex-specific employment laws." When a student of pink-collar workers asked a department store assistant manager in the 1970s why it was not possible to provide chairs to the workers, she replied: "I can't answer that, I don't know why. I guess it's just always been that way"; Louise Howe, *Pink Collar Workers: Inside the World of Women's Work* 91 (1977).

Chapter 2. From Taylorism to Ergonomics: A Managerial Basis for Rest Periods


2. Edward Atkinson, "Inefficiency of Economic Legislation," *J. Soc. Sci.*, No. 4 at 122, 128 (1871). The penal similarity may extend well beyond the nineteenth century. Workers at the General Motors plant in Dayton, Ohio, for example, "refer to the factories as the 'state prison.' They labor under the watchful eye of security guards and foremen." Keith Bradsher, "Need to Cut Costs? Order Out," *N.Y. Times*, Apr. 11, 1996, at C1, col. 2, at C4, col. 3 (nat. ed.).


deal Points on Industrial Sanitation and Hygiene 5, 6 (Special Bull. No. 3, 1941) (quote). In the absence of restructuring, unionized male workers such as cotton mill spinners engaged in another form of self-help: “On account of the physical strain and the exhausting nature of their employment, they have to leave their work at certain periods for rest. [T]he most industrious probably . . . take at least a few days every month. It is very rare where they would work probably 5 or 6 weeks without taking a few days for rest, and sometimes more.” 14 Report of the Industrial Commission on the Relations and Conditions of Capital and Labor Employed in Manufactures and General Business 571 (H. Doc. No. 183, 57th Cong., 1st Sess. 1901) (testimony of Thomas O’Donnell, secretary, Nat. Spinners Assoc.).


17. “Operation of 6-Hour Day in Plants of the Kellogg Co.,” at 1420 (quote); U.S. Women’s Bureau, A Study of a Change from 8 to 6 Hours of Work 7–10 (Bull. No. 105, 1933) (by Ethel Best); Agreement Between Kellogg Company and the American Federation of Labor on Behalf of the National Council of Grain Processors and Allied Industries Federal Local Union No. 20, 388, § 8(y) at 6 (June 23, 1937); Contract Between Kellogg Company and Local No. 3 American Federation of Grain Millers (A.F.L.–C.I.O.), 1966–1969, § 1010(b) at 50.


26. Lipmann, Lehrbuch der Arbeitwissenschaft at 397–98; Frederick Taylor, The Principles of Scientific Management 50–51, 53 (1911) (quote); Max Brombacher, “Hunger, Rest, and Shop Efficiency,” 91 Iron Age 1126 (May 8, 1913); Nevins & Hill, Ford at 514. This managerial practice was not restricted to the United States. For example, a worker in a Canadian woollen mill reported, “You were on your feet the whole ten hours. Even in the washroom, there were no chairs.” Joan Sangster, Earning Respect: The Lives of Working Women in Small-Town Ontario, 1920–1960, at 55 (1995) (quoting spinner who worked there for many years beginning in 1932).


30. Burtt, Psychology and Industrial Efficiency at 171–89; Sperling, Pause als soziale Arbeitszeit at 23 (quote).


34. Id. at 40–41, 47, 49–50 (quotes); Charles Wrege & Amedeo Perroni, “Taylor’s Pig-Tale: A Historical Analysis of Frederick W. Taylor’s Pig-Iron Experiments,” 17 Acad. Mgmt. J. 6, 22, 24 (1974); Charles Wrege & Ronald Greenwood,


41. NICB, Rest Periods for Industrial Workers at 1; Downs, Manufacturing Inequality at 76.


47. Goldmark & Hopkins, Comparison of an Eight-Hour Plant and a Ten-Hour Plant at 22, 176.


52. Ministry of Munitions, Health of Munition Workers Committee, Final Report: Industrial Health and Efficiency 42 (Cd. 9065, 1918); Shepard, “Effects of Rest Periods on Production” at 187.


55. H. M. Vernon & M. D. Vernon, “A Study of Five-Hour Work Spells for


59. U.S. BLS, Welfare Work for Employees in Industrial Establishments in the United States 7-8, 33, tab. 2 at 34, 35, 34, 35 (Bull. No. 250, 1919). On the various complex arrangements for rest periods for telephone operators, see Butler, Women and the Trades at 288-91. For evidence that the "stretch-out" in textiles was inconsistent with rest, see Herbert Lahne, The Cotton Mill Worker 153-55 (1944); Bryant Simon, "Choosing Between the Ham and the Union: Paternalism in the Cone Mills of Greensboro, 1925-1930," in Hanging by a Thread: Social Change in Southern Textiles 81, 89-93 (Jeffrey Leiter, Michael Schulman, & Rhonda Zingraff eds., 1991).

60. NICB, Rest Periods for Industrial Workers at 4, 12, 16, 8.


Use of Social Science in American Industry 86 (1962) (quoting president); Gillespie, Manufacturing Knowledge at 106–11.


65. Roethlisberger & Dickson, Management and the Worker at 571.


67. J. B. White (general manager, Aluminum Co. of Canada), Foreword to Lucien Brouha, Physiology in Industry: Evaluation of Industrial Stresses by the Physiological Reactions of the Worker vii (2d ed. 1967 [1st ed. 1960]).

68. Id. at xii.

69. Id.; Brouha, Physiology in Industry at 3, 4, 138.


73. J. Ramsay, R. E. Rawsom, et al., Rest-Pauses and Refreshments in Industry:


76. “Working Hours, the Five-Day Week, and Rest Spells in England,” 23 Monthly Lab. Rev. 1054, 1055 (1926) (quote); Edwin Ghiselli & Clarence Brown, Personnel and Industrial Psychology 246 (1948) (quote). It is revealing that by the mid-1950s, a much less contentious time for labor-management relations than the years immediately after World War II, the authors deleted this sentence. Edwin Ghiselli & Clarence Brown, Personnel and Industrial Psychology 278 (2d ed. 1955).


82. D. Coburn, “Work and General Psychological and Physical Well Being,”


Chapter 3. Bringing Incontinence Out of the (Water) Closet

1. “Your Urine or Your Job: Is Private Employer Drug Urinalysis Constitutional in California?” 19 Loyola L.A. L. Rev. 1451 (1986); Mark Rothstein, “Drug Testing in the Workplace: The Challenge to Employment Relations and Employment Law,” 63 Chi.-Kent L. Rev. 683, 703 (1987). A union official testified to Congress that Iowa Beef Processors (IBP), the largest U.S. meatpacking firm, requires employees who seek to exercise their right under the Nebraska workers compensation statute to see a noncompany physician for treatment of (nonemergency) on-the-job injuries to submit to a urine test as a precondition for permission to leave the


3. E.g., City Code of Iowa City, § 705(c) at 14-5A-3 (1994); e.g., Cal. Labor Code § 2350 (West Supp. 1993); 29 C.F.R. § 1910.141(c)(1) (1995) (quote); 29 U.S.C. § 654(a)(1) (1988) (quote); “AWOL on Job: Absent Without Lavatories,” N.Y. Times, Dec. 2, 1995, at B (nat. ed.). Quoting a Pentagon spokesman, the article pointed out that nevertheless, the Pentagon did “not shut down. . . . People will just have to control their bladders.”


12. “There Ain’t No Stopping Us Now,” Unite, Sept. 1995, at 12, 14 (Arkansas plant); telephone interview with L. Odneal, business agent, United Food & Commercial Workers, Marshall Durbin Co., Hattiesburg, MS (Oct. 24, 1995); e.g., 1990–1993 Agreement Between Foster Farms (Fresno) and United Food & Commercial Workers Union, Local No. 126, § 7(f) at 7 (one ten-minute and one fifteen-minute break plus one-half- to one-hour lunch); Collective Agreement Between Maple Lodge Farms Ltd. and United Food & Commercial Workers International Union, Local 175, Expires: October 1994, §§ 11.05 & 11.06 at 20 (two twelve-minute breaks); Agreement Between Wayne Farms, A Division of Continental Grain Company, Albertsville, Alabama, and the United Food and Commercial Workers International Union, art. XVII(b) at 21 (1991–1994). These collective rest periods are not to be confused with individual relief to use the toilet.

13. Joan Sangster, Earning Respect: The Lives of Working Women in Small-Town Ontario, 1920–1960, at 57 (1995) (quote); Hussein v. Tama Meat Packing Corp., 394 N.W.2d 340 (Iowa 1986) (a worker was denied unemployment compensation on the grounds that he was discharged for misconduct when he threw a beef tongue at a supervisor who had repeatedly denied his urgent requests to go to the toilet); telephone interview with Dan Anderson, unemployment insurance hearing officer, Des Moines, IA (Oct. 27, 1995) (stating that employees of meatpacking plants figure prominently in such unreported cases in Iowa); telephone interview with Becky Plattus, director of health and safety, Union of Needle, Industrial, and Textile Employees, New York City (Oct. 24, 1995). For an example of female jewelry factory workers who do not use the bathroom when working on piece rates but do so frequently on day rates, see Nina Shapiro-Perl, “Resistance Strategies: The Routine Struggle for Bread and Roses,” in My Troubles Are Going to Have Trouble with Me: Everyday Trials and Triumphs of Women Workers 193, 198 (Karen Sacks & Dorothy Remy eds., 1984). In B. F. Goodrich, 1973 OSAHRC 371 (Lexis), it was recognized in dictum that workers paid on an incentive basis and lacking autonomy to schedule their work might be subject to pressure restricting their access to the toilet.


23. Telephone interview with Cloyd Robinson, former chairman of Iowa Senate Labor Committee, Cedar Rapids, IA (Oct. 28, 1995) (stating that as a senator in the 1970s he received many calls from waitresses and other restaurant workers complaining that they received no breaks); telephone interview with Ron Gumeringer, labor standards supervisor, North Dakota Dept. of Labor, Bismarck, ND (Nov. 15, 1995) (stating that restaurant workers made more complaints about not receiving their regulatorily prescribed breaks than any other group); telephone interview with Barry Schwartzberg, senior labor standards investigator, N.Y. State Dept. of Labor, Albany district, Albany, NY (Nov. 27, 1995) (stating that complaints from restaurant workers concerning employers’ refusal to give them their statutorily mandated meal periods were “fairly common”); telephone interview with Jerry Messer, United Food & Commercial Worker organizer, Des Moines, IA (Oct. 11, 1995) (nursing home workers); information provided by elementary school teachers in Iowa City and Des Moines, IA; Steven Greenhouse, “Models Join Together to Make Unionism a Thing of Beauty,” N.Y. Times, Nov. 20, 1995, at B1, col. 2 (Lexis); Ted Drach, letter to editor, N.Y. Times, Dec. 16, 1989, at 16, col. 4 (nat. ed.) (taxi drivers). Unionized health care workers commonly receive two fifteen-minute rest periods and one thirty-minute lunch period; e.g., Agreement Between Beverly Enterprises D/B/A Beverly Health Care Center-East and United Food & Commercial Workers Union Local 1657, AFL-CIO-CLC Effective January 19, 1989, through January 18, 1995, art. 8; Agreement Between Beverly Enterprises Northwest Health Care Center and United Food & Commercial Workers Union, Local 400, December 1, 1993, Through November 30, 1996, § 11.4; Contract Between UFCW Local 789 and Summit Manor Health Care Center Effective October 1, 1994–September 30, 1997, art. 11.


30. Id. at 12–13.

31. 1902 Iowa Laws ch. 149, §§ 1, 4 at 107, 108 (quotes). The pre-OSHA period was not a golden age for hygienic voiding in Iowa. During the first biennial inspection period (1903–1905), more than one-third of inspected establishments provided only earth closets or privies, which “can never be sanitary when used by any considerable number of persons.” E. H. Downey, History of Labor Legislation in Iowa 102–103 (1910). The Iowa statute was the first bill introduced by the new state senator, Fred L. Maytag, who may have thereby helped reduce demand for the products of the world’s largest washing machine factory, which he would later own. Journal of the Senate of the 29th General Assembly 274 (1902); A.B. Funk, Fred L. Maytag 69 (1936).

32. Telephone interview with Cloyd Robinson, who was an Iowa state senator in 1972 (stating that legislators did not realize the impact of the repeal); 1972 Iowa Laws ch. 1028, §§ 1, 2 at 95 (quote); Neb. Rev. Stat. § 48-401 (1993); telephone interview with “Cliff,” Iowa state OSHA compliance officer, Des Moines, IA (Oct. 26, 1995) (quote).


34. 29 C.F.R. § 1928.110 (1995) (field sanitation); telephone interview with Daniel Mick, national solicitor’s office, Regional Trial and OSH Review Commission Litigation Counsel, Washington, DC (Oct. 17, 1995); telephone interview with Mary Bryant, Iowa State OSHA administrator, Des Moines, IA (Oct. 31, 1995), and Walter Johnson, deputy commissioner, Div. of Labor Services, Dept. of Employ-
ment Services, Des Moines, IA (Oct. 27, 1995); letter from Mary Bryant to Marc Linder (Nov. 17, 1995). OSHA has cited employers who locked toilets or provided fewer than the required number of toilets: Kinney Systems, Inc., 1979 OSAHRC 606 (Lexis); Kara Swisher, “EEOC Files Suit Over Potty Parity,” Wash. Post, Jan. 6, 1994, at D10 (Lexis).


36. OSHA, Citation and Notification of Penalty to Hudson Foods, Inc., Inspection No. 300002250, Citation 4 Item 9, at 46 (July 22, 1997) (quote); OSHA, News Release USDL 97-242, http://www.osha.gov (July 22, 1997). In formulating the legal basis for this citation, OSHA officials were able to make use of the history of the agency’s toilet regulations of which they had been unaware until the analysis presented below in this chapter was made available to them. The United Food and Commercial Workers in April 1997 submitted a request to OSHA for a clarification of the standard. Specifically, the union asked OSHA to clarify whether employers’ obligation to provide toilets requires employers to permit workers to use them when necessary, and whether OSHA agrees with Iowa OSHA’s position that it lacked the power to cite employers who refused workers permission to use the toilet. The agency is said to be willing to inform its regional offices as well as state OSHA agencies that workers do have such a right. Telephone interviews with Deborah Berkowitz, director of Health and Safety Department, UCFW, Washington, DC (April and May 1997).


44. OSHA furnished copies from its archives of all the letters (dated 1972) cited here commenting on the proposed sanitation standard: U.S. Steel (Aug. 4); Meat Institute (Aug. 14); Swift (Aug. 11); AT&T (Aug. 11); PPG (Aug. 14); Hickory (July 26); A. Johnson (July 23); Iowa Manufacturers (Oct. 27); Steel Institute (Aug. 14).

45. Fleetwood (Aug. 9); Iowa Manufacturers (Aug. 7); Ford (Aug. 10); Motor Vehicle Manufacturers (Aug. 16).

46. Rohm & Haas (Aug. 10); Staley (July 15).


48. Id. at 216-18, 214.


50. Telephone interview with Robert Manware, directorate of health standards, OSHA, Washington, DC (Mar. 3, 1997). Manware has no recollection of employers’ proposals for relief system regulations or of why his group deleted the “readily accessible” standard. Tom Seymour, who was an official at OSHA from its inception until his retirement on Feb. 28, 1997, at which time he was deputy director of safety standards, attended the 1972 hearing and confirmed that no employer even hinted that its real agenda was cutting back on toilet breaks. Telephone interview with Seymour, Washington, DC (Feb. 21, 1997).


54. 29 C.F.R. §§ 1928.110(c)(2)(iii); 29 C.F.R. §§ 1928.110(a) & 1928.110(c)(2)(i); “Farm Worker Group Questions Coverage, Enforcement of Field Sanitation Rule,” Daily Labor Report, May 15, 1987, at A-5 (Lexis); 29 C.F.R. § 1928.110(c)(4)(i-iii) (italics added). For an example of agricultural employers who claimed that they were not subject to OSHA because they employed fewer than fifteen employees, see Guadarrama v. Department of Labor and Industry (Cir. Ct. City of Richmond filed Sept. 28, 1994).

(quote); telephone interview with Marilyn Lantry, former state senator, Osakis, MN (Oct. 16, 1995); 5 Legislature of Minnesota, Journal of the House of Representatives, 75th Sess. 10775–77 (1988). An exception to Oregon's regulation requiring virtually universal provision of meal and rest periods for employees in stores working alone but fewer than five hours daily is revealing: it operates only if “the employee is allowed to leave his/her assigned station when the employee must relieve himself/herself of body wastes.” Or. Admin. R. § 839-20-050(4)(e) (1993).


60. Agreement Between United Food & Commercial Workers Union, Local 2008, & ConAgra Broiler Company El Dorado, Arkansas, Effective November 15, 1993, to November 17, 1996, § 6 at 23, 24. At the same time, in renegotiating a contract with another poultry processor, the UFCW traded off an increase in breaks from ten to fifteen minutes for an elimination of “automatic bathroom breaks”; however, even now “emergency situations will be allowed and employees will not be denied to go to restroom. Habitual visits on a daily basis will not be allowed.”
Notes to Pages 65-68

Chapter 4. Women at Rest: The Legal Status of Rest Periods Before Title VII


hours work done . . . in any one day . . . shall be deemed a lawful day's work, unless otherwise agreed by the parties.” 1867 Conn. Acts ch. 37 at 23–24. For an excellent example of judicial interpretation that made such statutes worthless, see Luske v. Hotchkiss, 27 Conn. 219 (1870). Bricklayers, as one example among many, abandoned the effort to achieve the eight-hour day through legislation in 1874, turning instead to collective action against individual employers. Marion Cotter Cahill, Shorter Hours: A Study of Movement Since the Civil War 204 (1932).


7. Kelley, *Some Ethical Gains Through Legislation* at 170–71 (quote); 49 U.S.C. 88 21103(a) & (b) (5) & (6) (1995) (quote); United States v. Cornwall, 268 F. 680, 683 (M.D. Pa. 1920) (quote); Atchison, Topeka & Santa Fe Ry. v. Pena, 44 F.3d 437, 443 (7th Cir. 1995), aff’d sub nom. Brotherhood of Locomotive Engineers v. Atchison, Topeka & Santa Fe R.R., 64 U.S.I.W. 4045 (U.S. Jan. 9, 1996) (quote). In order to reduce wage costs associated with hiring additional engineers or paying overtime, railroad companies have nevertheless lawfully imposed fatiguing (night-time) split schedules on employees that can lead to fatal crashes. Richard Pérez-


9. Laurence Tribe, American Constitutional Law 569 n.2 (2d ed. 1988 [1st ed. 1978]); Judith Baer, The Chains of Protection: The Judicial Response to Women’s Labor Legislation 89 (1978) (quote); Brandeis, “Labor Legislation” at 681 (quote); 1913 Or. Laws ch. 102, § 2 at 169. The overwhelming jurisprudential and political attention that has been lavished on the Oregon statute has produced historical amnesia concerning the laws in the South. Oregon’s overriding significance is rooted in constitutional law scholars’ preoccupation with the “seeds of self-contradiction” in the Lochner era’s devotion to liberty of contract that they have seen sprouting from Bunting v. Oregon, 243 U.S. 426 (1917), in which the U.S. Supreme Court upheld the Oregon overtime law. Tribe, American Constitutional Law at 574. In the alternative, some feminists’ concern with the “pedestalization” of women in some U.S. Supreme Court cases upholding shorter hours laws for women has blinded them to the coexisting judicial acceptance of gender-neutral hours laws. E.g., Catharine MacKinnon, Toward a Feminist Theory of the State 165–66 (1989).

10. Or. Rev. Stat. § 652.020 (1995); 1913 Or. Laws ch. 102, § 1 at 169 (quote); State v. Bunting, 139 P. 731, 735, 736 (Or. 1914) (quote).

11. 1912 Miss. Laws ch. 157 at 165; 1914 Miss. Laws ch. 169 at 217 (permitting an additional twenty minutes of work during each of the first five days of the week to be deducted from the sixth day leaving the weekly total at sixty hours); 1918 Miss. Laws ch. 439 at 995; State v. J. J. Newman Lumber Co., 59 So. 923, 929 (Miss. 1912) (quote); 1889 Ga. Laws No. 599 at 163 (limiting cotton and woollen mill workers to eleven hours); 1892 S.C. Acts No. 32, § 1 at 90 (limiting textile workers to eleven hours); 1922 S.C. Acts No. 567 at 1011 (limiting textile workers to ten hours/day and fifty-five hours/week); 1915 N.C. Sess. Laws ch. 148, § 2 at 232 (limiting male workers in manufacturing to eleven hours); 6 Report on Condition of Women and Child Wage-Earners in the United States: The Beginnings of Child Labor Legislation in Certain States 147–88 (S. Doc. No. 645, 61st Cong., 2d Sess. 1910) (by Elizabeth Otey); Paul Blanchard, “Tremendous Strides” of the Cotton Industry in the South,” Am. Lab. Leg. Rev., Mar. 1928, at 47, 48; Herbert Lahne, The Cotton Mill Worker 138–43 (1944). The statement that the Georgia and South Carolina nominal ten-hour laws were “nullified by their own wording” because they permitted certain exceptions was nevertheless overbroad. Josephine Goldmark, “The Study of Fatigue and Its Application to Industrial Workers,” in 3 Transactions of the Fifteenth International Congress on Hygiene and Demography 517, 526 n.4 (1913).

12. 1 Felix Frankfurter, The Case for the Shorter Work Day 6–7 (1915) (listing all hours of rest statutes); U.S. Womens Bureau, Chronological Development of Labor Legislation for Women in the United States 135. 280 (Bull. No. 66, 1929) (by Florence Smith); 1913 N.Y. Laws ch. 740, at 1861 (gender-neutral day-of-rest


16. *5 Report on Condition of Woman and Child Wage-Earners in the United States: Wage-Earning Women in Stores and Factories* at 109–10. This account is puzzling since the statute also expressly stated that the employer "shall permit use" of the chairs by the female workers. Ill. Rev. Stat. ch. 48, § 97 at 1130 (1911). The employer's conduct was therefore on the face of it unlawful. Other investigations revealed "that often there is a tacit understanding that no sales girl should be caught sitting down, even when her stock is in order, and no customer is waiting." *N.Y. State Dept, of Labor, Bureau of Women in Industry, Industrial Posture and Seating* 49 (Special Bull. No. 104, 1921).


18. Florence Kelley, "Wage-Earning Women in War Time: The Textile Industry," *J. Indus. Hygiene* 261, 268 (1919) (quote); Elizabeth Hawes, *Hurry Up Please It's Time* 38–39 (1946). Most revealing about this collapse of enforcement is the light it sheds on the alleged frailty of women: "It was just as important for the men to get off their feet from time to time as for the women—and if a man didn’t find a seat, he’d simply steal one from a woman." *Id.* at 39.


22. Elizabeth Baker, Protective Labor Legislation: With Special Reference to Women in the State of New York 119 (1969 [1925]) (quote); 1899 Ind. Acts ch. 142, § 11, at 231, 235–36, repealed by 1971 Ind. Acts Pub. L. 356, § 2, at 1434, 1444; 1901 Pa. Laws No. 206, § 11, at 322, 324; 1905 Pa. Laws No. 226, § 4, at 352, 354; 1886 La. Acts No. 43, § 4 at 55; 1900 La. Acts No. 55, § 2 at 87; 1904 La. Acts No. 195, § 1 at 429, 430; 1911 N.J. Laws ch. 273, § 1, at 585. After having mandated one hour for dinner for women and children in 1886, Louisiana in 1900 required all retail businesses “where female labor or female clerks are employed . . . to give each employee each day . . . not less than . . . 30 minutes for lunch or recreation”; four years later the legislature narrowed the scope of coverage while making the ungendered applicability less ambiguous by mandating one hour for the midday meal or recreation for all retail clerks in cities of more than 50,000 in population. Whereas the recess for women in the 1900 Louisiana act benefited their male colleagues in retail businesses, the provision of the same act that required all businesses employing female labor or clerks to provide seats mandated them only for “said employees.” 1900 La. Acts No. 55, § 1 at 87. On later developments, see 16 West’s La. Stat. Ann. 79 (1951) (reporter’s notes to La. Rev. Stat. Ann. § 23:333).


by Department,” 1 (44) U.S. Employment Service Bull., 1 (Dec. 17, 1918); “Protective Standards for Women Must Be Built Up and Maintained,” 1 (38) U.S. Employment Service Bull. 11 (Oct. 22, 1918) (Van Kleeck); “Federal Standards for the Employment of Women in Industry” at 217. By 1921 the recommended meal period was reduced to thirty minutes. U.S. Women’s Bureau, Standards for the Employment of Women in Industry 4 (Bull. No. 3, 3d ed. Oct. 15, 1921 [1st ed. Dec. 12, 1918]). The standards, which were first drafted on October 10, 1918, were modified in light of the impending armistice; the plan to insert them into government contracts was not carried out. First Annual Report of the Director of the Woman in Industry Service for the Fiscal Year Ended June 30, 1919, at 7–8 (1919).

26. U.S. Women’s Bureau, Chronological Development of Labor Legislation for Women at 280. The two groups of states were Arkansas, California, Delaware, Kansas, Louisiana, Massachusetts, Minnesota, New York, North Dakota, Ohio, Pennsylvania, Washington, and Wisconsin; and Arkansas, Delaware, Kansas, Louisiana, Maine, Maryland, Massachusetts, North Dakota, Oregon, Pennsylvania, Washington, and Wisconsin.


28. U.S. Women’s Bureau, Women in Mississippi Industries at 1; U.S. Women’s Bureau, Women in Delaware Industries at 16 (quote). Similarly, the agency credulously stated that the small proportion (1.2 percent) of women workers in Ohio who received lunch periods of less than thirty minutes “was undoubtedly due to emergency conditions, since the State law provides for a minimum of 30 minutes.” U.S. Women’s Bureau, Women in Ohio Industry: A Study of Wages and Hours 21 (Bull. No. 44, 1925).

29. Gwendolyn Hughes, Mothers in Industry: Wage-Earning by Mothers in Philadelphia 151–52, 156 (1925); Kelley, “Wage-Earning Women in War Time” at 277 (Rhode Island). For further anecdotal evidence that in the 1930s clothing manufacturing employees in New York received considerably less time than the statutory meal period, see Nancy Seifer, Nobody Speaks for Me! Self-Portraits of American Working Class Women 50 (1976).

30. Elizabeth Butler, Women and the Trades: Pittsburgh, 1907–1908 (1909), at 311–12 (1 The Pittsburgh Survey, Paul Kellogg ed., 1911) (quote); Annette Mann, Women Workers in Factories: A Study of Working Conditions in 275 Industrial Estab-
lishments in Cincinnati and Adjoining Towns (1918) 9–10, reprinted in Working Girls of Cincinnati (1974). By the same token, even Mary Anderson, the head of the U.S. Women’s Bureau, observed that in large cities (presumably with long travel times) some workers preferred thirty- to forty-five-minute lunch periods rather than an hour, so that they could go home earlier. “First International Congress of Working Women, Washington, D.C.,” 9 Monthly Lab. Rev. 280, 285 (1919). In contrast, the fact that some nineteenth-century German factory workers placed such a high priority on eating their midday meal at home even when they lived far from their workplace that they did not hesitate to leave work early has been interpreted as evidence of their distance from “capitalist managerial economics.” Lothar Machtan, “Zum Innenleben deutscher Fabriken im 19. Jahrhundert: Die formelle und die informelle Verfassung von Industriebetrieben, anhand von Beispielen aus dem Bereich der Textil- und Maschinenproduktion (1869–1891),” 20 Archiv für Sozialgeschichte 179, 216 (1981).


35. C. Sappington, Essentials of Industrial Health 394 (1943); C. Turner, “Industrial Health Education and the Promotion of the Health and Effectiveness of the Worker,” in Industrial Hygiene 575, 585 (A. Lanza & Jacob Goldberg eds., 1939); Baker, Women in War Industries at 39 (quote); L. Sanders, “Eleven Tips on


Chapter 5. Sexual Equality or “The Equality of Having No Protective Laws Whatsoever”?


4. “Women’s Industrial Conference” at 618–19. For an excellent example of the view that women must “admit that their own sex is physically weaker than the sex which votes and does other things which strong-minded women pine to do” before the law should intervene (to order employers to give them seats), see “The Shop-Girls,” N.Y. Times, Dec. 15, 1875, at 6, col. 6 (editorial).


20. Anderson, “Should There Be Labor Laws for Women? Yes!” at 173; Crystal Eastman, “Equality or Protection” (1924), in Crystal Eastman on Women and Revolution 156, 157 (Blanche Cook ed., 1978). This forceful collectivist position contradicts the claim that because Progressive reformers “shared the pervasive belief in individualism they were unable to rebut the charge that individuals are compromised by collective . . . activities.” Martha Minow, Making All the Difference: Inclusion, Exclusion, and American Law 259 (1990).


36. 30 Fed. Reg. at 14,927 (codified at 29 C.F.R. §§ 1604(b) & (c)).

37. 30 Fed. Reg. at 14,927 (codified at 29 C.F.R. § 1604(c)).


47. Equal Rights 1970 at 82.


49. Equal Rights 1970 at 311 (Emerson), 317 (Dorsen); Citizens’ Council on the Status of Women, “The Equal Rights Amendment—What It Will and Won’t Do,” reprinted in Equal Rights for Men and Women 1971 at 568, 569; Sylvia Hewlett, A Lesser Life: The Myth of Women’s Liberation in America 202–203 (1986). Curiously, Hewlett reports that she engaged in such proselytizing while attending an American Economics Association convention in Atlanta despite the fact that no such women’s protective statute was on the books in Georgia.


53. Reports of the Inspectors of Factories for the Half-Year Ending 31st October 1848, at 17 (26 Parl. Pap. 1847–1848, c. 1017). In addition, many men had to work twelve hours to pay off debts or “get their furniture out of pawn” in the wake of “more than two years of great suffering among the factory operatives,” during which many factories had worked short hours or had been closed altogether. Id. at 16. The claim of a follower of Adam Smith, based on the same source, that twelve-hour days for men “were not prompted by the threat of unemployment” reflects his exclusive reliance on employers’ statements. Edwin West, “Marx’s Hypotheses on the Length of the Working Day,” 91 J. Pol. Econ. 266, 275 (1983).


56. Equal Rights 1970 at 223 (statement of Rep. Griffiths) (quotes). On the UAW and mandatory overtime in the early 1970s, see Agis Salpukas, “Voluntary Overtime a Key U.A.W. Issue,” N.Y. Times, June 20, 1973, at 1, col. 5; “Quick Decision,” Newsweek, Oct. 1, 1973, at 84–85. In the 1990s auto firms have reduced their labor forces in the wake of significant labor-saving productivity increases; in order to retain the flexibility they require to manage the “enormous spurts of activity” caused by just-in-time production methods, firms impose heavy mandatory overtime (as much as sixty-six hours in two weeks) on their remaining employees. The drive to extract as much labor as possible from as few workers as possible will at some point preclude accommodation of the UAW’s demands for protection of those consigned to enforced idleness. Capital may, however, also be trapped in the worst of both worlds if it cannot raise productivity quickly enough, exacerbates the problem by “trying to do too much with too few people,” and yet finds

As a collectivist anti-laissez-faire countermodel: the British Trades Union Congress opposed “leaving the individual worker free to make a judgment between an increase in income for shift working and the sacrifice of leisure” because “the worker most likely to accept shift working . . . is the man with heavy family and financial commitments who is young enough and healthy enough to be willing to stand the disturbance that accompanies shift work.” Monty Meth, “TUC Showdown over Shiftwork,” (London) Sunday Times, Sept. 3, 1972, at 58.

57. Ronnie Ratner, “The Paradox of Protection: Maximum Hours Legislation in the United States,” 119 Int’l Lab. Rev. 185, 195 (1980) (quote); The “Equal Rights” Amendment: Hearings Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary, 91st Cong., 2d Sess. 473 (1970) (testimony of Kenneth Meiklejohn, legislative representative, AFL-CIO) (quote); AFL-CIO, “Policy Resolution Adopted December 1967 by the 7th Constitutional Convention,” reprinted in The “Equal Rights” Amendment at 358, 359 (quote); The “Equal Rights” Amendment at 355 (statement of Eloise Basto, Communication Workers of America) (quote). Even as excellent an historian as Kathryn Kish Sklar writes that the eight-hour day “was not established for all workers by federal legislation until” FLSA was enacted in 1938. Kathryn Sklar, “Why Were Most Politically Active Women Opposed to the ERA in the 1920s?” in Rights of Passage at 25, 28. FLSA, however, neither established the eight-hour day nor applied/applies to all workers.


59. The “Equal Rights” Amendment at 11 (statement of Myra Harmon).

60. 30 Fed. Reg. at 14,927 (codified at 29 C.F.R. § 1604.1(c)(2) (1967)). Where a gender-biased rest-period benefit in a collective bargaining agreement perversely created an incentive for the employer to deny a job to a woman on the ground that
such "arbitrary" shut downs" were incompatible with the job, the court found
the union and firm in violation of Title VII. Richards v. Griffith Rubber Mills, 300

61. Phyllis Schlafly, The Power of the Positive Woman 117 (1977) (quote); Margare-
net Mead, "Epilogue" to American Women: The Report of the President's Com-
mmission on the Status of Women and Other Publications of the Commission 181, 184
(Margaret Mead & Frances Kaplan eds., 1965) (quote); Equal Rights for Men and
Women 1971, at 256 (as quoted in statement of Ruth Miller, Amalgamated Cloth-


63. The "Equal Rights" Amendment at 316, 323, 327 (testimony of Myra Wolfgang,
vice president, Hotel & Restaurant Employees Union).

64. AFL-CIO Research Department, "American Federation of Labor and Con-
gress of Industrial Organizations Memorandum on Objections to Proposed Equal
Rights Amendment" (Feb. 1963), reprinted in The "Equal Rights" Amendment at
702 ("equality without 'rights'"); Catharine Stimpson, "Introduction" to Women and
the "Equal Rights" Amendment: Senate Subcommittee Hearings on the Constitu-
tional Amendment, 91st Congress xii, xvi (Catharine Stimpson ed., 1972) ("class
Federationist, Jan. 1971, at 12, 14 ("the dispute"); Carolyn Jacobson, "ERA: Ratify-
ing Equality," Am. Federationist, Jan. 1975, at 9 ("the argument," "labor's historic
support").

65. The "Equal Rights" Amendment at 617 (statement of Jacob Potofsky, general
president, ACW).

66. Barbara Brown, Thomas Emerson, Gail Falk, & Ann Freedman, "The Equal
Rights Amendment: A Constitutional Basis for Equal Rights for Women," 80 Yale

Rev. 263 (1953) (reprinted from J. Commerce, May 4, 1953, at 4, col. 1) (quote);
"The Coffee Hour," Time, Mar. 5, 1951, at 25 (quotation); "Coffee Comes, Employ-
ees Stay Put," Bus. Wk., June 2, 1951, at 54; "Inside Story of the Coffee Break,
Reader's Digest, Sept. 1961, at 226. For a related account of Ford Motor Company's
yielding to its production workers' demand for retention of their tea breaks at the

68. NICB, Women in Factory Work 38 (Studies in Personnel Policy No. 41, 1942);
Edward Jones, The Administration of Industrial Enterprises: With Special Reference
to Factory Practice 379 (new ed. 1925 [1st ed. 1916]) (quote).

69. Equal Rights for Men and Women 1971 at 258 (statement of Ruth Miller,
ACW).

70. The "Equal Rights" Amendment at 596, 600, 602, 606 (statement of Stephen
Schlossberg, general counsel, UAW) (reprinting his statement submitted at EEOC
hearing, May 2, 1967) (quote); 21UAW Administrative Letter No. 10, at 1 (Nov. 6,
1969), reprinted in ibid. at 595; Equal Rights 1970 at 109 (testimony of Katherine


74. Kessler-Harris, Out to Work at 315, 306.

75. The “Equal Rights Amendment” at 603 (statement of Stephen Schlossberg, general counsel, UAW) (quote); Gabin, Feminism in the Labor Movement at 204 (quote).


Chapter 6. Judicial and Legislative Struggles: Repeal or Extension of Gendered Rest Periods?


9. 3 Larson, Employment Discrimination § 44.05 at 44-31. In this regard Larson’s proposal of a bifurcated analysis is only partially helpful: “Lunch and rest periods may be paid or unpaid. If they are paid, they should be assimilated to the overtime pay cases and disposed of under the Equal Pay Act. Obviously, if women are being paid the same wage for less time at work, they are in effect receiving a higher wage per hour, and the express provisions of the Equal Pay Act would control. On the other hand, if a mandatory rest or lunch break is unpaid, the law requiring it should be assimilated to protective legislation limiting hours of work, night work, heavy lifting. . . . Accordingly, such a law should be deemed invalidated under the supremacy principle.” Id. at 44-30. As a formal decision rule, the first part of Larson’s proposal makes sense; his treatment of unpaid lunch breaks,
however, which is driven by a substantive judgment based on a per se rejection of "restrictive" regulations, makes no sense—especially since the underlying welfare principle is the need for rest and nourishment, not whether the worker is compensated for the time. For a good illustration of this latter issue, see United Steelworkers of America, Local 1104, v. United States Steel Corp., 4 Fair Empl. Prac. Cas. (BNA) 1103 (N.D. Ohio 1972), aff'd, 479 F.2d 1255 (6th Cir. 1973) (female employees who received unpaid but uninterrupted meal breaks pursuant to state law are not entitled to injunctive relief under Title VII and back pay because under collective bargaining agreement male employees were always paid for meal breaks that were sometimes interrupted).

10. Burns v. Rohr Corp., 346 F. Supp. at 998. The court's further "practical" objection that extension would unfairly disadvantage employers who happened to employ many males and few females vis-a-vis those with no female employees makes no sense: extension means that all male workers are entitled to rest breaks regardless of whether they work with women. Id. at 997.


12. Precisely because state laws are concerned with such absolute levels, Title VII is not intended to occupy and therefore does not preempt the same field. 3 Larson, Employment Discrimination § 44.02 at 44-12 to 44-13.


17. LeBlanc v. Southern Bell Tel. & Tel. Co., 333 F. Supp. 602, 609 (E.D. La. 1971). New Mexico's 1933 thirty-minute meal-period law, which on its face applies only to women not engaged in interstate commerce and whose hours are not governed by any federal statute, may also not be preempted by Title VII, at least with respect to employers with fewer than fifteen employees. N.M. Stat. Ann.


27. General Electric Co. v. Young, 3 FEP at 566.


37. N.Y. Lab. Law § 162(1) (McKinney 1995); Salisbury Hotel, Inc., 283 N.L.R.B. 685 (1987) (employer for a time stated that law required only female employees to take hour lunch break and permitted men to forgo the meal period and work a shorter day); N.Y. Lab. Law. § 162(2); 1974 Ill. Laws Pub. Act 78-1105, § 1, codified at ILCS 140/3 § 3 (West 1995); 1989 Conn. Acts Pub. Act No. 89-71, § 1, codified at Conn. Gen. Stat. Ann. § 31-5ii(a), (c), & (f) (West 1995) (excluding, for example, workers who already received at least thirty minutes of paid rest time and those at places of business with fewer than five employees).

38. 1989 Minn. Laws ch. 167, § 167, codified at Minn. Stat. § 177.254 (1995). The Minnesota state minimum wage regulations, generally requiring that an "employee be completely relieved from duty for the purpose of eating regular meals" for at least 30 minutes, presumably applies to the mandated meal period. Minn. R. 5200.0120 subpt. 4 (1994). Yet the Minnesota Labor Standards Division provides a recorded announcement to the public stating that the employer need not give employees a lunch break, but merely an opportunity to eat—if necessary, "on the run." Telephone message, (612) 296-2282 (Nov. 15, 1995).


42. Telephone interview with Judy Long, compliance supervisor, Wage and Hour Div., Bureau of Labor and Industry, Portland, OR (Nov. 3, 1995). One Oregon court, while conceding that violation of the rest break regulation is not actionable as a statutory wage claim, ruled, "[a]s a matter of equity," that the violation as a breach of an at-will employment contract did give rise to quantum meruit damages in the form of one and a half times the workers' hourly rates. Olds v. Hogan Mfg., Inc., No. 9310-06720, slip op. at 3 (Cir. Ct. Multnomah Cty. Or. Dec. 29, 1994).

43. Telephone interview with Erik Kerzee, attorney, Evergreen Legal Services, Sunnyside, WA (Nov. 15, 1995) (discussing Washington State enforcement poli-
cies involving his clients); telephone interview with Delbert Cory, enforcement officer, Minnesota Labor Standards Division (Nov. 15, 1995).


46. N.Y. Lab. Law § 162.1 (McKinney 1995); New York State, Department of Labor, Division of Labor Standards, “Guidelines: Meal Periods” (Sept. 1994); N.Y. Lab. Law. § 162.5. The 1887 statute empowered the factory inspector to permit shorter meal periods but only “in special cases” and “where good cause can be shown.” 1887 N.Y. Laws ch. 462, § 14 at 575, 577. By 1909 this additional language was eliminated. N.Y. Lab. Law § 89 at 2063 (Consol. 1909).


Chapter 7. How the Other Half Rests: How Many Workers Have Rest Periods?


3. NICB, Personnel Practices in Factory and Office, tabs. 33–34 at 18–19 (Studies
in Personnel Policy No. 88, rev. ed. 1948); NICB, Time Off with Pay, tab. 14 at 14; NICB, Personnel Practices in Factory and Office, tabs. 32–33 at 18–19 (Studies in Personnel Policy No. 145, 5th ed. 1954); NICB, Personnel Practices in Factory and Office: Manufacturing, tabs. 41–42 at 39–40 (Studies in Personnel Policy No. 194, 1964) (the number of companies providing formal rest periods for white-collar employees only was subtracted from the total number providing this benefit to arrive at the figures mentioned in the text); Conference Board, Personnel Practices III: Employee Services, Work Rules, tab. 32 at 39 (Infor. Bull. No. 95, 1979) (by Harriet Gorlin).


5. U.S. Chamber of Commerce, Employee Benefits Historical Data, tab. 4 at 11, tab. 6 at 16; U.S. Chamber of Commerce, Employee Benefits: Survey Data from Benefit Year 1993, tab. 6 at 15, tab. 14 at 27, tab. 17 at 34, tab. 5 at 13.

6. For her benchmark year, 1947, Greis received a total of only five responses concerning breaks. Had she instead used 1948 as the base year, when the average number of paid break hours reached eighty-eight, she would have found a sharp decline during the postwar period. Even for the later years, 1974 and 1979, Greis collected only twenty-six and thirty-two responses to this particular question; oddly, she provides no underlying data for 1969. Theresa Greis, The Decline of Annual Hours Worked in the United States Since 1947, at 99, tab. V–7 at 105, 341, 336, 335 (1984).


10. 29 C.F.R. § 775.18 (1995); Reports of the Inspectors of Factories for the Half
Year Ending 31st October, 1856, at 48 (3 Parl. Pap. 1857 Sess. 1, c. 2153) (quote). Their counterparts in Massachusetts during the Gilded Age also observed that starting women weavers several minutes before the lawful scheduled time in the mornings gained their employers "one or two hours a week." Report of the Chief of Massachusetts District Police, for the Year Ending December 31, 1886, at 55 (Pub. Doc. No. 32, 1887).


12. Republic Aviation Corp. v. NLRB, 324 U.S. 793, 795, 804 n.10, 802 n.6 (1945) (quoting Peyton Packing Co., 49 N.L.R.B. 828, 843 (1943), and Republic Aviation Corp., 51 N.L.R.B. 1186, 1195 (1943)).


17. U.S. BLS: Characteristics of Major Collective Bargaining Agreements, January 1, 1980, tab. 5.15 at 94 (Bull. 2095, 1981); Characteristics of Agreements Covering 5,000 Workers or More, tab. 48 at 49 (Bull. 1686, 1970); Characteristics of Agreements Covering 2,000 Workers or More, tab. 51 at 52 (Bull. 1729, 1972); Characteristics of Agreements Covering 1,000 Workers or More July 1, 1972, tab. 51 at 50 (Bull. 1784, 1973); Characteristics of Agreements Covering 1,000 Workers or More July 1, 1973, tab. 53 at 50 (Bull. 1822, 1974); Characteristics of Major Collective Bargaining Agreements, July 1, 1974, tab. 5.7 at 61 (Bull. 1888, 1975); Characteristics of Major
Collective Bargaining Agreements, July 1, 1975, tab. 5.7 at 75 (Bull. 1957,1977); Characteristics of Major Collective Bargaining Agreements, January 1, 1976, tab. 5.14 at 67 (Bull. 2013,1979); Characteristics of Major Collective Bargaining Agreements, January 1, 1978, tab. 5.14 at 87 (Bull. 2065,1980); Labor-Management Contract Provisions 1953: Prevalence and Characteristics of Selected Collective-Bargaining Clauses, tabs. 1, 2 at 19 (Bull. 1166,1954); Rest Periods, Washup, Work Clothing, and Military Leave Provisions in Major Union Contracts, tab. 1 at 2 (Bull. 1279,1961). During the 1970s, once the survey became more inclusive and encompassed agreements covering at least 1,000 workers, the proportion of those without rest periods stabilized at 56 to 59 percent.


20. BNA, Basic Patterns in Union Contracts 55 (13th ed. 1992); BNA, Basic Patterns in Union Contracts 57-8, 57-7 (5th ed. 1961); Commerce Clearing House, Union Contract Clauses 108 (1954).


22. E.g., Swift & Company Master Agreement with the Amalgamated Meat Cutters & Butcher Workmen of North America, September 24, 1956, through September 1, 1959, § 18 at 15–16 (two spell-out or relief periods); Swift & Company Master Agreement with the United Packinghouse, Food & Allied Workers, AFL-CIO, September 1, 1964, to September 1, 1967, § 18 at 16–17 (same); Swift & Company Master Agreement with the United Packinghouse, Food & Allied Workers, AFL-CIO, § 18 at 16–17 (1976–1979) (same); Master Agreement By and Between United Packinghouse Workers of America (CIO) and Armour & Company, art. 9.3(a) & (b) at 28 (Oct. 1, 1956) (ten-minute rest periods morning and afternoon); Master Agreement By and Between Amalgamated Meat Cutters & Butcher Workmen of North America AFL-CIO and Armour & Company, April 18, 1970, through August 31, 1973, art. 9.3(a) & (b) at 28 (ten-minute rest periods morning and afternoon); Agreement Between The Rath Packing Company and Local 46, United Packinghouse Workers of America, AFL-CIO, Waterloo, Iowa, § 15 at
7 (Nov. 12, 1956) (fifteen-minute “spell-out or relief time for personal needs” during each half-day in excess of three hours); Agreement Between The Rath Packing Company and Local 46, United Packinghouse Workers of America, AFL-CIO, Waterloo, Iowa, § 15 at 7 (1961) (same); Agreement Between The Rath Packing Company and Amalgamated Meat Cutters & Butcher Workers, Waterloo, Iowa, § 26 at 13 (1973) (same); Agreement Between Oscar Mayer Company, Madison, Wisconsin & Amalgamated Meat Cutters & Butcher Workmen of North America AFL-CIO, Local No. 538, § 34 at 10 (1956–1959) (not longer than three hours of work without a rest period of twenty minutes on first shift and fifteen minutes on other shifts) (quote); Working Agreement Between United Packinghouse, Food, & Allied Workers of America (UPWA) AFL-CIO, Local 31 and Geo. A. Hormel Co., Fort Dodge, Iowa, Memo 27 at 34 (Jan. 1, 1966) (not more than three hours of work without a rest period); Agreement Between Dubuque Packing Company and Amalgamated Meat Cutters & Butcher Workmen of North America AFL-CIO, Local 100, July 8, 1965, to Sept. 1, 1967, § 9.1 at 12 (not more than 2.5 hours of work without a ten-minute break); Agreement Between Wilson Foods Corporation and United Packinghouse Workers of America, § 18 at 8 (Nov. 30, 1956) (not more than 2.5 hours of work without a fifteen-minute break); Agreement Between Wilson Foods Corporation and United Food & Commercial Workers International Union, AFL-CIO (Sept. 11, 1979 through Sept. 1, 1982), art. IX at 5 (not more than 2.5 hours of work without a fifteen-minute break).


Chapter 8. Rest in the Rest of the World

1. Beginning with World War I, the French state required employers to provide nursing mothers with two half-hour breaks to feed their infants. Loi concern­nant l'allaitement maternel dans les établissements industriels et commerciaux, Sirey, Legislation 596 (Aug. 5, 1917). For a limited period the French Labour Code provided for a one-hour rest period for women. Labour Code, L. 212-9, in ILO, Legislative Series, 1981—Fr. 1, at 62, repealed by Act No. 87-423 regarding the duration and arrangement of working time, June 19, 1987, § 12, in ILO, Legislative Series, 1987—Fr. 1, at 4. Italy requires employers to allow working mothers two one-hour paid rest periods during their child’s first year; if the mother uses an employer-furnished nursery, the periods may be reduced to thirty minutes. Act to provide for the protection of working mothers, Dec. 30, 1971 (No. 1204), § 10.


4. John Rae, Eight Hours for Work 9 (1894).

5. Robert Owen, “On the Employment of Children in Manufactories” (1818) in A New View of Society and Other Writings 130, 137 (1949); An Act to amend the Laws relating to Labour in Factories, 7 & 8 Vict., ch. 15, §§ 32–33 at 82, 92, 93 (1844); An Act to limit the Hours of Labour of young persons and Females in Factories, 10 & 11 Vict., ch. 29 (1847); An Act to amend the Acts relating to Labour in Factories, 13 & 14 Vict., ch. 54, § 3 at 328, 329 (1850); 1 Marx, Das Kapital at 207–11, 257–69; B. Hutchins & A. Harrison, A History of Factory Legislation 81 (2d ed. 1911) (quote). To be sure, Marx also concluded that the class antagonism between
factory owners and landowners that had made the factory laws possible had been mitigated by the ruling classes' joint hatred of the people; consequently, Parliament intentionally inserted loopholes in the statutes that promoted evasion and circumvention. Karl Marx, “The State of British Manufactures” (1859), in 16 Karl Marx & Frederick Engels, Collected Works 190 (1980).


13. Margarete Grandner, "Special Labor Legislation for Women in Austria, 1860–1918," in Protecting Women at 150, 150–60; Gesetz vom 8. März 1885, betreffend die Abänderung und Ergänzung der Gewerbeordnung, §§ 74a, 96. Reichsgesetzblatt at 35, 36–37, 46 (if the work time before or after the meal period amounted to less than five hours, the remaining thirty minutes could be dispensed with; various ministries were charged with reducing work pauses in industries where interruption of operations was impracticable); Arbeitszeitgesetz vom 11. Dezember 1969, § 11(1); Reports from Her Majesty’s Representatives in Europe and the United States on the Laws Affecting the Hours of Adult Labour in the Countries in which They Reside 3 (C.-5866, 1889).

Women in Germany, 1878–1914,” in ibid. at 125, 131–35; Conference internationale concernant le règlement du travail aux établissements industriels et dans les mines 199 (par autorisation officielle, 1890). The German delegation had at first urged pauses amounting to two hours. Id. at 72, 78.


17. 2 Robert von Landmann, Kommentar zur Gewerbeordnung für das Deutsche Reich 419, 423 (5th ed. 1907); Gesetz, betreffend die Abänderung der Gewerbeordnung, June 30, 1900, § 139c, ¶ 3, 1 RGBl 321, 326.


19. Marie Bernays, Untersuchungen über die Schwankungen der Arbeitsintensität während der Arbeitswochen und während des Arbeitstages: Ein Beitrag zur Psychophysik der Textilarbeit, in Max Morgenstern et al., Auslese und Anpassung der Arbeiterchaft in der Lederwaren-, Steinzeug- und Textilindustrie 183, 283–308 (135 Schriften des Vereins für Socialpolitik, pt. 3, 1912); Deutschmann, Der Weg zum Normalsarbeitstag at 128, 145, 157, 231–32, 251–55, 266–67 (giving examples of rest periods in various industries); Bernhard, Höhere Arbeitsintensität at 45 (quote); Rae, Eight Hours for Work at 56 (quote).


21. Industrial Fatigue Research Board, Results of Investigation in Certain Industries iii (No. 27, 1924) (quote); Sidney Webb and Beatrice Webb, Industrial


24. Anordnung über die Regelung der Arbeitszeit gewerblicher Arbeiter, §§ II & VIII, Nov. 23, 1918, RGBl I, 1334, 1335; Anordnung zur Ergänzung der Anordnung über die Regelung der Arbeitszeit gewerblicher Arbeiter vom 23. November 1918, § I, Dec. 17, 1918, RGBl I, 1436; Verordnung über die Regelung der Arbeitszeit der Angestellten während der Zeit der wirtschaftlichen Demobilisierung, § 2, Mar. 18, 1919, RGBl I, 315. Morris Hillquit, Socialism in Theory and Practice 220 (1912), incorrectly stated that the hours of adult male factory workers were legally limited to eleven in Germany; prior to 1918 there was no such general limitation.

25. Dora Landé, “Arbeits- und Lohnverhältnisse in der Berliner Maschinenindustrie zu Beginn des 20. Jahrhunderts,” in von Bienkowski et al., Auslese und Anpassung der Arbeiterschaft in der Elektroindustrie, Buchdruckerei, Feinmechanik und Maschinenindustrie 303, 413–14 (134 Schriften des Vereins für Sozialpolitik, 1910); Jürgen Kuczynski, Die Geschichte der Lage der Arbeiter unter dem Kapitalismus: Darstellung der Lage der Arbeiter in Deutschland von 1917/18 bis 1932/33, at 232–33 (1966) (quote); Deutschmann, Der Weg zum Normalarbeitsstag at 192–93, 200; U.S. BLS, Postwar Labor Conditions in Germany 94–122 (Bull. 380, 1925) (by R. R. Kuczynski); Verordnung über die Arbeitszeit, Dec. 21, 1923, Reichsgesetzblatt I, 1249. Commenting on the industrial inspectors’ reports on these developments, the extremely orthodox and dogmatic East German economic historian Jürgen Kuczynski expressed amazement at the “cunning and cruelty of capitalist working and living relations, which bring the workers into a situation” in which they engage in an “appalling” struggle for short pauses while the government officials “set themselves up as humane hygienists.” 5 Kuczynski, Geschichte at 233. What epithet would Kuczynski reserve for Nazi “work scientists” who both thoughtfully urged “enlightenment” for workers—who, understandably, had failed to grasp that in the long run too-short pauses undermined their “labor power”—and resisted German workers’ tendency during World War II to shorten their rest periods in order to get home sooner and employers’ calls to abolish them altogether? Arbeitswissenschaftliches Institut der Deutschen Arbeitsfront,

26. “Recommendations of German Medical Factory Inspectors as to Rest Periods,” 20 Monthly Lab. Rev. 992 (1925); Ludwig Preller, Sozialpolitik in der Weimarer Republik 149 (1978 [1949]); Alf Ludtke, “Arbeitsbeginn, Arbeitspausen, Arbeitsende: Skizzen zu Bedürfnisbefriedigung und Industriearbeit im 19. und frühen 20 Jahrhundert,” in Sozialgeschichte der Freizeit: Untersuchungen zum Wandel der Alltagskultur in Deutschland 95, 118 (Gerhard Huck ed., 1980). Indeed, in West Germany, where legal scholars continued to write methodologically more self-conscious analyses of rest periods than in the United States, authors maintained this pro-capital or, at least, pro-production bias not only by repeating this particular argument about why the pause must be scheduled within the workday, but also by arguing that work-free time and vacations in general are designed to enable workers to regenerate sufficiently to resume their work with “fresh powers.” Since these two sources of regenerative time, however, do not permit workers to work uninterruptedly during the workday, the state has mandated rest pauses at prescribed intervals. J. Denecke & Dirk Neumann, Arbeitszeitordnung: Kommentar 163 (9th ed. 1976); Peter Meisel, “Die arbeitsrechtliche Bedeutung von Erholungszeiten,” 19 Recht der Arbeit 163 (1966) (quote). The stress on output of this version of rest periods, in which workers are merely instrumentalized for ever more efficient physiological processes without serving their own purposes, is striking.


33. Sperling, Pause als soziale Arbeitszeit at 134; Uwe Engfer et al., “Arbeitszeit- und Arbeitszeitverkürzung in der Sicht der Beschäftigten: Ergebnisse einer Arbeitnehmerbefragung,” in Claus Ofhe, “Arbeitsgesellschaft”: Strukturprobleme und Zukunftsperspektiven 167, tab. 6 at 180, tab. 7 at 182 (1984); “Einigung auf Haustarif für fast 100 000 Beschäftigte,” Suddeutsche Zeitung, Sept. 13, 1995 (Lexis); “IG Metall weist Angebot von VW erneut zurück,” Suddeutsche Zeitung, Sept. 9, 1995 (Lexis); “60000 Beschäftigte im Warnstreik,” Suddeutsche Zeitung, Sept. 5, 1995 (Lexis); Schobel, Dem Fließband ausgeliefert at 34, 71 (reporting that at the Daimler-Benz plant at Sindelfingen the assembly line ran faster after the new break system was introduced); 1 Verband fur Arbeitstudien - REFA - E.V., Das REFA - Buch: Arbeitsgestaltung 37–38 (5th ed. 1955 [1st ed. 1951]).

34. League of Nations, International Labor Conference: First Annual Meeting, October 29, 1919–November 29, 1919 (1920); 1 Decreto de Mayo 21 de 1920 sobre

35. Legal and Contractual Limitations to Working-Time in the European Community Member States: European Foundation for the Improvement of Living and Working Conditions 37 (R. Blanpain & E. Köhler eds., 1988) (on Denmark); An Act respecting hours of work, No. 604, Aug. 2, 1946, § 16, in ILO, Legis. Ser., 1946—Fin. 4, at 6; Arbetstidslagen, June 24, 1982 (No. 763), §§ 15 & 17, at 1391, 1394; Lov om arbeidervern og arbeidsmiljø, Feb. 4, 1977, No. 4, § 51, Norges lover 2517, 2533. Although the Norwegian Workers' Protection Act of 1936 was in many ways quite stringent, its gender-neutral break provision was timid, requiring two breaks amounting to at least forty-five (but reducible by agreement between employer and employees to thirty) minutes only if daily hours exceeded eight, which constituted the statutory normal working day (§§ 17, 19-20, 22 (1)). Lov om arbeidervern, June 19, 1936, Norges lover 1682-948, 1948, 1952-53 (1950).


37. Rodokijunho § 34(1), Law No. 49 of 1947: Hours of Work and Rest Law, May 21, 1951 (as amended), § 20(a) (Israel); Basic Conditions of Employment Act, 3 of 1983, § 7(1)(a) (S. Africa); Act on the Labour Code of the Hungarian Republic 1992 (No. XXII), § 122(1) (in International Encyclopedia for Labour Law and
Industrial Relations: Legislation 2 (1994)). A number of socialist countries enacted
rest provisions: Act No. 49 to promulgate the Labour Code, Dec. 28, 1984, § 84,
in ILO, Legis. Ser., 1984—Cuba 1, at 15 (30 minutes for rest and personal needs);
minutes for food and rest); Labour Code, July 3, 1973, § 57, in ILO, Legis. Ser.,
1985—Mongolian PR (no more than two hours for rest and meals); Act No. 2-VIII
of Supreme Soviet, § 29, in ILO, Legis. Ser., 1970—USSR 1 (no more than two
hours for rest and meals).

Chapter 9. “Go to the Bathroom Please. . . . We’ll
Wait for You”: From At-Will Employment to At-Will Voiding

1. Friedrich Engels, “Dell’Autorità” (1874), in 1:24 Karl Marx [&] Friedrich
Engels, Gesamtausgabe (MEGA) 82, 85 (1984); Stanley Nollen, New Work Sched­
ules in Practice: Managing Time in a Changing Society 23 (1982). On the use of
flextime in batch-process manufacturing, see id. at 23; Simcha Rosen, Flexible

2. Georg Heller, “Die Arbeitszeit soll nicht mehr sinnlos zerkleinert wer­
Kampf um den Lohnrahmentarifvertrag II in Nordwurttemberg/Nordbaden 205, 206
(Vorstand der IG Metall für die Bundesrepublik Deutschland ed., 1977) (quot­
ing unionist); Agreement Between UAW and the General Motors Corporation
433 (Oct. 24, 1993) (“Sufficient labor will be provided to enable employees to
obtain . . . relief”); Laura Downs, Manufacturing Inequality: Gender Division in
breakers”); Michel Bosquet, “The ‘Prison Factory,’” New Left Rev., No. 73, May–
June 1972, at 23 (“furtively”); E. H. Downey, History of Work Accident Indemnity
in Iowa 5 (1912) (“blood tax”). When the UAW negotiated an additional twelve
minutes of relief time for Ford workers in 1964, it was reported that the company
“might add 1,250 more workers to provide me[n] to relieve those entitled to the
added time off.” David Jones, “Ford Union Wins 63¢ More an Hour,” N.Y. Times,
Sept. 19, 1964, at 1, col. 4, at 15, col. 5.

3. Barbara Garson, All the Livelong Day: The Meaning and Demeaning of Rou­
tine Work 29 (1982 [1975]) (quote); Heller, “Die Arbeitszeit soll nicht mehr sinnlos
zerkleinert werden” at 206.

4. 1 Otto Bauer, Kapitalismus und Sozialismus nach dem Weltkrieg: Rationali­sierung—Fehlrationalisierung 95–96 (1931). On supervisory intensity, see David
Gordon, “Bosses of Different Stripes: A Cross-National Perspective on Monitoring

5. H. Gerbis, “Die Rationalisierung in gewerblichen Betrieben vom gewerbe­
hygienischen Standpunkt,” in Waffenschmidt, H. Gerbis, & H. Eibel, Arbeiterschutz und Rationalisierung 11, 22 (Beihete zum Zentralblatt für Gewerbehygiene
und Unfallverhütung 14, 1929); Zweites REFA-Buch: Erweiterte Einführung in die
Arbeitszeitermittlung 27 (Reichsausschuss für Arbeitsstudien ed., 1939 [1933])


7. Paul Weingarten, “Men’s Room Trip Opens Door to Women’s Rights,” Chi. Trib. July 29, 1990, at 5 (Lexis) (“logistics” and quoting Julius Ballanco, senior staff engineer, Building Officials and Code Administrators International on “equality”); Elaine Ayala, “Potty Parity Issue Surfaces Again,” St. Louis Post-Dispatch, Aug. 15, 1990, at 3E (Lexis) (citing two studies comparing the time in the bathroom of men and women—45 vs. 79 seconds and 84 vs. 180 seconds, respectively—and quoting Building Officials and Code Administrators official on “discriminating”). Contrary to public perception, prescriptions of potty parity do not date from the 1980s: as early as the 1940s, the Uniform Plumbing Code prescribed more toilets for females than males in elementary and secondary schools, dormitories, theaters, and auditoriums. U.S. Dept. of Commerce & Housing and Home Finance Agency, Uniform Plumbing Code: Report of the Uniform Plumbing Code Committee, tab. 6.16.1 at 26–27 (1949). More recently the plumbing code extended the numerical differentials to hospitals, offices, penal institutions, and restaurants. International Association of Plumbing and Mechanical Officials, Uniform Plumbing Code: 1994 Edition, appendix C at 189–93 (1994). The 1994 Uniform Building Code for the first time prescribed more water closets for women than for men in assembly places such as auditoriums and stadiums. 1 International Conference of Building Officials, Uniform Building Code, tab. A-29-A at 495 (1994). The actual number of toilets prescribed for either sex, rather than being the product of scientific traffic and usage studies or cueing theory, is a “situated wild guess,” in the words of one of its creators, who also thought it was a “good question,” to which he had no good answer, as to why neither the uniform plumbing nor building code has applied potty parity to factories. Telephone interview with Alvin Kleinbeck, former Minnesota state building code administrator and member of the International Conference of Building Officials committee that formulated the minimum required number of plumbing fixtures for the 1994 Uniform Building Code, Minneapolis, MN (May 28, 1997).

8. Snyder, “Governor Signs ‘Potty Parity’ Bill into Law” (quoting Yolanda Nava, wife of author of California law, who “got stuck behind fifty-six other women waiting to use the restroom” at music hall); Sandra Rawls, “Restroom Usage in Selected Public Buildings and Facilities: A Comparison of Females and Males” 126, tab. 23 at 131 (1988) (unpublished Ph.D. dissertation, Virginia Polytechnic Institute and State University) (the smallest gap was 168 and 121 seconds in an airport, the largest 157 and 70 seconds in a sports arena; Rawls’s own percentages are all miscalculated, as they take men’s time as a share of women’s time); G. Marshall, “‘Potty Parity’ Measure Moves Along,” UPI, Oct. 17, 1988 (Lexis); Raju Narisetti,

9. Rosenfeld v. Southern Pac. Co., 444 F.2d 1219, 1225 (9th Cir. 1971) (quote); Brown, Emerson, Falk, & Freedman, “The Equal Rights Amendment” at 893 (quote). “While it is physiologically perfectly possible for females to urinate in a standing position . . . perhaps the most important restriction is . . . posed by our clothing.” In particular, women “would be forced to disrobe completely.” Alexander Kira, The Bathroom 146 (rev. ed. 1976 [1st ed. 1966]). Freud, who regarded as a clear case of penis envy attempts by young girls to imitate their brothers by urinating while standing—which unsurprisingly resulted in wet shoes—presumably would not have joined the “socially constructed” camp. Sigmund Freud, “Erfahrungen und Beispiele aus der Analytischen Praxis” (1913), in 10 Sigmund Freud, Gesammelte Werke 40, 41 (1946).


13. 42 U.S.C. §§ 12111(8), 12112(a), 12112(b)(5)(A), 12111(9)(A) & (B), 12111(10) (A) & (B). The EEOC recently issued guidance suggesting that an employer of a cashier with a psychiatric disability who must drink every hour to combat the dry mouth associated with his medication “should consider . . . modifying its policy limiting cashiers to two 15-minute breaks . . . barring undue hardship”—to the

14. 29 C.F.R. Pt. 1630, App. § 1630.2(0) at 407 (1995). Only employers employing at least fifteen employees for twenty weeks per year are subject to the ADA.


18. 42 U.S.C. § 12111(9).


21. National Interfaith Committee for Worker Justice, Code of Ethics for Poultry Companies (1997); ‘Relief as French ‘Pee Break’ Strike Ends,” Reuters World Service, Aug. 9, 1995 (Lexis) (quoting Lucien Bigard, owner of a large French slaughterhouse); Jill Fraser, “The Executive Life: This Is One Facility Not Being
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26. See chapter 2 above.


35. For examples from large wartime plants, see "What the Men Eat," Bus. Wk., Apr. 18, 1942, at 73.

36. The Shops and Shop-Assistants Act, 1894, N.Z. Acts., No. 32, §§ 15(a) & (b) at 153, 157 (1894); Fla. Stat. § 448.05 (1995). On compliance with this provision in New Zealand, see 2 William Pember Reeves, State Experiments in Australia & New Zealand 190 (1903). In 1904 the New Zealand Parliament amended the statute to require employers to permit female shop assistants to use the seats "at reasonable intervals throughout the day." The Shops and Offices Act, 1904, N.Z. Acts, No. 52,
§ 6(b) at 277, 280. The Seats for Shop Assistants (Scotland) Act, 1899, Bill No. 82, in 7 H.C. Parl. Pap. 71 (1899), was modeled on the New Zealand statute.

37. In connection with German employers' far-reaching obligation to regulate operations so as to avoid impairing workers' health and safety, the fact that the Code expressly preserves an employee's right to be compensated when he is prevented from working for personal reasons for short periods without fault creates a legal basis for viewing unavoidable voiding simply as part of compensable working time. Bürgerliches Gesetzbuch §§ 618 (1), 616(1).


40. Id. at 7.

41. Id. at 10, 11, 13–15 (quotes); telephone interview with Norman Mitchell, president, IUE, local 761, Louisville, KY (Oct. 30 and Nov. 8, 1995).

42. Oral History Interview with Richard Lindner, Fort Dodge, IA, Aug. 8, 1981, transcript at 16 (Iowa Labor History Oral Project, State Historical Society, Iowa City, IA) (cited with permission of Mark Smith, Iowa Federation of Labor).
