

Assembly Concurrent Resolution No. 43

Adopted in Assembly April 14, 2005

Chief Clerk of the Assembly

Adopted in Senate July 11, 2005

Secretary of the Senate

This resolution was received by the Secretary of State this
_____ day of _____, 2005, at _____
o'clock ____M.

Deputy Secretary of State

RESOLUTION CHAPTER _____

Assembly Concurrent Resolution No. 43—Relative to labor.

LEGISLATIVE COUNSEL'S DIGEST

ACR 43, Jerome Horton. Labor.

This measure would declare that the Division of Labor Standards Enforcement does not have the authority to promulgate a specified regulation relating to meal and rest periods, that this authority rests with the Legislature or the Industrial Welfare Commission, and that the specified regulation is inconsistent with existing law.

WHEREAS, Section 1 of Article XIV of the California Constitution declares, “The Legislature may provide for minimum wages and for the general welfare of employees and for those purposes may confer on a commission legislative, executive, and judicial powers”; and

WHEREAS, Pursuant to this constitutional authorization, the Legislature enacted Section 1173 of the Labor Code, conferring upon the Industrial Welfare Commission (IWC) the authority “to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed in this state, and to investigate the health, safety, and welfare of those employees”; and

WHEREAS, The California Supreme Court has affirmed that the IWC “is the state agency empowered to formulate regulations (known as Wage Orders) governing employment in the State of California” (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 561); and

WHEREAS, Exercising its statutory powers, the IWC has promulgated 17 industry and occupational Wage Orders regulating the wages, hours, and working conditions of California employees and these Wage Orders are required by law to be posted at every workplace in California; and

WHEREAS, The IWC must follow the procedures set forth in Sections 1171 to 1188, inclusive, of the Labor Code to promulgate regulations through convening wage boards consisting of equal representation of employers and employees in

a particular industry or occupation, except in instances where there has been a specific legislative mandate to follow other procedures; and

WHEREAS, By establishing the detailed IWC process the Legislature has ensured that the commission charged with establishing workplace protections for California workers does so only after a comprehensive process ensuring participation of equal numbers of employers and employees is completed in compliance with Sections 1171 to 1188, inclusive, of the Labor Code; and

WHEREAS, The Legislature has conferred upon the citizen members of these wage boards the unique authority to recommend changes in wage and hour law which are binding upon the IWC when enacted by a two-thirds vote of the wage board; and

WHEREAS, No other agency, department, or division, including the Division of Labor Standards Enforcement (DLSE), has been additionally delegated these powers to regulate wages, hours, and working conditions; and

WHEREAS, In Section 516 of the Labor Code, the Legislature reiterates this explicit grant of power to the IWC to “adopt and amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers”; and

WHEREAS, The DLSE has recently proposed a meal and rest break regulation at Section 13700 of Title 8 of the California Code of Regulations that would significantly diminish long-standing protections in California wage and hour law concerning the provision of meal and rest periods to employees; and

WHEREAS, The DLSE does not have the authority to promulgate a regulation that weakens the substantive protections and remedies afforded to California employees under Sections 226.7 and 512 of the Labor Code and the 17 Wage Orders; and

WHEREAS, The proposed regulation is inconsistent with existing law and regulations which require, among other protections, that the employer provide a meal break to all employees within the first five hours of work unless a statutory waiver is entered into between the employer and the employee; and

WHEREAS, The Legislature has granted DLSE discrete rulemaking authority that is limited in scope to the internal operations of DLSE and to areas of labor law enforcement that are not expressly delegated to another officer, board, or commission and the Legislature has expressly delegated authority to regulate wages, hours, and working conditions to the IWC; and

WHEREAS, Two separate entities promulgating contradictory regulations on the same subject will create confusion concerning an employee's right to meal and rest breaks; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby declares that the DLSE does not have the authority to promulgate the proposed regulation concerning meal and rest periods; and be it further

Resolved, That this authority rests exclusively with the Legislature or, in the alternative, the IWC, pursuant to legislative delegation of power; and be it further

Resolved, That the proposed regulation on meal and rest breaks is inconsistent with existing law and will create confusion concerning these rights; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor of the State of California, to the Secretary of the Labor and Workforce Development Agency, and to the State Labor Commissioner.

Attest:

Secretary of State