

**ASSEMBLY BILL**

**No. 1397**

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**Introduced by Committee on Labor and Employment (Swanson  
(Chair), Alejo, Allen, Furutani, and Yamada)**

February 28, 2011

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An act to amend Section 512 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1397, as introduced, Committee on Labor and Employment. Working hours.

Existing law requires an employer to provide an employee with one meal period during a work period of more than 5 hours and 2 meal periods during a work period of 10 hours, as prescribed.

This bill would make a nonsubstantive change to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 512 of the Labor Code is amended to
- 2 read:
- 3 512. (a) An employer may not employ an employee for a work
- 4 period of more than five hours per day without providing the
- 5 employee with a meal period of not less than 30 minutes, except
- 6 that if the total work period per day of the employee is no more
- 7 than six hours, the meal period may be waived by mutual consent
- 8 of both the employer and employee. An employer may not employ
- 9 an employee for a work period of more than 10 hours per day

1 without providing the employee with a second meal period of not  
2 less than 30 minutes, except that if the total hours worked is no  
3 more than 12 hours, the second meal period may be waived by  
4 mutual consent of the employer and the employee only if the first  
5 meal period was not waived.

6 (b) Notwithstanding subdivision (a), the Industrial Welfare  
7 Commission may adopt a working condition order permitting a  
8 meal period to commence after six hours of work if the commission  
9 determines that the order is consistent with the health and welfare  
10 of the affected employees.

11 (c) Subdivision (a) does not apply to an employee in the  
12 wholesale baking industry who is subject to an Industrial Welfare  
13 Commission wage order and who is covered by a valid collective  
14 bargaining agreement that provides for a 35-hour workweek  
15 consisting of five 7-hour days, payment of one and one-half times  
16 the regular rate of pay for time worked in excess of seven hours  
17 per day, and a rest period of not less than 10 minutes every two  
18 hours.

19 (d) If an employee in the motion picture industry or the  
20 broadcasting industry, as those industries are defined in Industrial  
21 Welfare Commission Wage Order Numbers 11 and 12, is covered  
22 by a valid collective bargaining agreement that provides for meal  
23 periods and includes a monetary remedy if the employee does not  
24 receive a meal period required by the agreement, then the terms,  
25 conditions, and remedies of the agreement pertaining to meal  
26 periods apply ~~in lieu~~ *instead* of the applicable provisions pertaining  
27 to meal periods of subdivision (a) of this section, Section 226.7,  
28 and Industrial Welfare Commission Wage Order Numbers 11 and  
29 12.

30 (e) Subdivisions (a) and (b) do not apply to an employee  
31 specified in subdivision (f) if both of the following conditions are  
32 satisfied:

33 (1) The employee is covered by a valid collective bargaining  
34 agreement.

35 (2) The valid collective bargaining agreement expressly provides  
36 for the wages, hours of work, and working conditions of  
37 employees, and expressly provides for meal periods for those  
38 employees, final and binding arbitration of disputes concerning  
39 application of its meal period provisions, premium wage rates for

1 all overtime hours worked, and a regular hourly rate of pay of not  
2 less than 30 percent more than the state minimum wage rate.

3 (f) Subdivision (e) applies to each of the following employees:

4 (1) An employee employed in a construction occupation.

5 (2) An employee employed as a commercial driver.

6 (3) An employee employed in the security services industry as  
7 a security officer who is registered pursuant to Chapter 11.5  
8 (commencing with Section 7580) of Division 3 of the Business  
9 and Professions Code, and who is employed by a private patrol  
10 operator registered pursuant to that chapter.

11 (4) An employee employed by an electrical corporation, a gas  
12 corporation, or a local publicly owned electric utility.

13 (g) The following definitions apply for the purposes of this  
14 section:

15 (1) “Commercial driver” means an employee who operates a  
16 vehicle described in Section 260 or 462 of, or subdivision (b) of  
17 Section 15210 of, the Vehicle Code.

18 (2) “Construction occupation” means all job classifications  
19 associated with construction by Article 2 (commencing with  
20 Section 7025) of Chapter 9 of Division 3 of the Business and  
21 Professions Code, including work involving alteration, demolition,  
22 building, excavation, renovation, remodeling, maintenance,  
23 improvement, and repair, and any other similar or related  
24 occupation or trade.

25 (3) “Electrical corporation” has the same meaning as provided  
26 in Section 218 of the Public Utilities Code.

27 (4) “Gas corporation” has the same meaning as provided in  
28 Section 222 of the Public Utilities Code.

29 (5) “Local publicly owned electric utility” has the same meaning  
30 as provided in Section 224.3 of the Public Utilities Code.