

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1397

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

February 28, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1397, as amended, ~~Committee on Labor and Employment Swanson~~. 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~~ *allow an employee driver of a charter-party carrier licensed by the California Public Utilities Commission to take an on-duty meal period if specified conditions are met.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. 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

1 employee with a meal period of not less than 30 minutes, except
2 that if the total work period per day of the employee is no more
3 than six hours, the meal period may be waived by mutual consent
4 of both the employer and employee. An employer may not employ
5 an employee for a work period of more than 10 hours per day
6 without providing the employee with a second meal period of not
7 less than 30 minutes, except that if the total hours worked is no
8 more than 12 hours, the second meal period may be waived by
9 mutual consent of the employer and the employee only if the first
10 meal period was not waived.

11 (b) Notwithstanding subdivision (a), the Industrial Welfare
12 Commission may adopt a working condition order permitting a
13 meal period to commence after six hours of work if the commission
14 determines that the order is consistent with the health and welfare
15 of the affected employees.

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

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

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

37 (1) The employee is covered by a valid collective bargaining
38 agreement.

39 (2) The valid collective bargaining agreement expressly provides
40 for the wages, hours of work, and working conditions of

1 employees, and expressly provides for meal periods for those
2 employees, final and binding arbitration of disputes concerning
3 application of its meal period provisions, premium wage rates for
4 all overtime hours worked, and a regular hourly rate of pay of not
5 less than 30 percent more than the state minimum wage rate.

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

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

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

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

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

16 (g) *An employee driver of a charter-party carrier licensed by*
17 *the California Public Utilities Commission shall be permitted to*
18 *take an on-duty meal period if all of the following conditions are*
19 *satisfied:*

20 (1) *The employee driver and the employer charter-party carrier*
21 *have entered into a mutual agreement providing for on-duty meal*
22 *periods.*

23 (2) *The employee driver is under the direction and control of a*
24 *customer being served.*

25 (3) *The employee is permitted to eat during the on-duty meal*
26 *period.*

27 (4) *The employee is paid a daily premium of no less than*
28 *one-hour's pay at straight time for any meal period that would*
29 *otherwise be required pursuant to this section.*

30 (5) *The on-duty meal period is considered hours worked for the*
31 *purpose of calculating wages due to the employee.*

32 (6) *State or federal law or a local police directive imposes a*
33 *requirement that the employee not be relieved of all duties.*

34 ~~(g)~~

35 (h) The following definitions apply for the purposes of this
36 section:

37 (1) "Commercial driver" means an employee who operates a
38 vehicle described in Section 260 or 462 of, or subdivision (b) of
39 Section 15210 of, the Vehicle Code.

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

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

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

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