

**Introduced by Senator Dutton**February 15, 2011

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

## LEGISLATIVE COUNSEL'S DIGEST

SB 389, as introduced, Dutton. Employment: meal periods.

Existing law requires an employer to provide an employee who works more than 5 hours in a workday with a meal period of not less than 30 minutes, unless the employee works no more than 6 hours in a workday and the meal period is waived by mutual consent. An employer also is required to provide an employee who works more than 10 hours in a workday with a 2nd meal period of not less than 30 minutes, unless the employee works no more than 12 hours, the first meal period was not waived, and the 2nd meal period is waived by mutual consent. The Industrial Welfare Commission (IWC) of the Department of Industrial Relations adopts and amends wage orders that, among other things, specify how meal periods are required to be provided to covered employees within various industries, including the procedures for providing employees with on-duty meal periods. Existing law provides that a violation of these provisions is a misdemeanor.

This bill would revise the statutory requirements for the provision of meal periods to specify that the requirements apply only to employees subject to the meal period provisions of an order of the IWC. The statutory requirements for providing the meal periods would be revised to specify that a meal period based on working more than 5 hours in a workday is required to be provided before the employee completes 6 hours of work, unless the existing waiver provision is invoked. The waiver provision for the 2nd meal period would be changed to provide

an exception for different provisions within specified IWC wage orders, and to permit the employer and employee to agree to waive either the first or the 2nd meal period if the employee otherwise is entitled to 2 meal periods. The bill also would specify conditions under which on-duty meal periods are permitted. The meal period provisions of a valid collective bargaining agreement would be required to be implemented for covered employees rather than the statutory requirements.

The bill would require that orders of the IWC be interpreted in a manner consistent with this section, and would require the Department of Industrial Relations to amend and republish specified IWC wage orders to be consistent with the revised meal period requirements.

Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

*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~~ shall not employ an employee ~~for~~  
 4 ~~a work~~ who is subject to the meal period provisions of an order  
 5 of the Industrial Welfare Commission and who works more than  
 6 five hours ~~per day~~ in a workday without providing the employee  
 7 with a meal period of not less than 30 minutes, *before the employee*  
 8 *completes six hours of work*, except that if the total work period  
 9 per day of the employee is no more than six hours, the meal period  
 10 may be waived by mutual consent of both the employer and  
 11 employee. An employer ~~may~~ shall not employ an employee for a  
 12 work period of more than 10 hours ~~per~~ in a work day without  
 13 providing the employee with a second meal period of not less than  
 14 30 minutes, ~~except that if the total hours worked is no more than~~  
 15 ~~12 hours~~. *Except as authorized by Industrial Welfare Commission*  
 16 *Wage Order Numbers 4 and 5, if the total hours worked is no more*

1 *than 12 hours in a work day, the second meal period may be*  
2 *waived by mutual consent of the employer and the employee only*  
3 *if the first meal period was not waived.*

4 *(b) An on-duty meal period qualifies as a lawful meal period*  
5 *under subdivision (a) for an employee covered by an Industrial*  
6 *Welfare Commission wage order that authorizes an on-duty meal*  
7 *period if all of the following conditions are satisfied:*

8 *(1) The employer and the employee have entered into a written*  
9 *agreement for an on-duty meal period which includes a statement*  
10 *that the employee may revoke the agreement in writing with no*  
11 *less than three business days' notice to the employer if the*  
12 *applicable Industrial Welfare Commission wage order authorizes*  
13 *the employee to revoke the agreement.*

14 *(2) The employee has an opportunity to eat while on duty.*

15 *(3) The on-duty meal period is counted as time worked.*

16 *(4) The nature of the work prevents the employee from being*  
17 *relieved of all duty.*

18 *(c) The nature of an employee's work is deemed to prevent that*  
19 *employee from being relieved of all duty, pursuant to paragraph*  
20 *(4) of subdivision (b), if one or more of the following conditions*  
21 *exists:*

22 *(1) The employee works alone or is the only person in the*  
23 *employee's job classification who is on duty at the location or in*  
24 *the department, or there are no other qualified employees who*  
25 *can reasonably relieve the employee of all duty.*

26 *(2) State or federal law imposes a requirement that the employee*  
27 *remain on duty at all times.*

28 *(3) The nature of the work creates an imminent danger or makes*  
29 *it unsafe for the employee, the public, or the environment if the*  
30 *employee is relieved of all duty.*

31 *(4) The work product or processing of the product, including*  
32 *the transport or delivery of the product, will be destroyed or*  
33 *damaged if the employee is relieved of all duty.*

34 *(5) The employee has direct responsibility for children who are*  
35 *under 18 years of age or who are not emancipated from the foster*  
36 *care system and who, in either case, are receiving 24-hour*  
37 *residential care, or is employed at a 24-hour residential care*  
38 *facility for the elderly, blind, or developmentally disabled*  
39 *individuals.*

1 (d) If an employee is entitled to two meal periods pursuant to  
2 subdivision (a), both meal periods may be on-duty meal periods  
3 if the requirements of subdivision (b) are met.

4 (e) This section does not apply to an employee covered by a  
5 valid collective bargaining agreement that includes provisions  
6 pertaining to meal periods. The terms, conditions, and remedies  
7 of the collective bargaining agreement pertaining to meal periods  
8 apply instead.

9 (f) All orders of the Industrial Welfare Commission shall be  
10 interpreted in a manner consistent with this section. The  
11 Department of Industrial Relations shall amend and republish  
12 Industrial Welfare Commission Wage Order Numbers 1 to 13,  
13 inclusive, and 15 to 17, inclusive, to be consistent with this section,  
14 but shall make no other changes to the wage orders.

15 ~~(b)~~

16 (g) Notwithstanding subdivision (a), the Industrial Welfare  
17 Commission may adopt a working condition order permitting a  
18 meal period to commence after six hours of work if the commission  
19 determines that the order is consistent with the health and welfare  
20 of the affected employees.

21 ~~(e)~~

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

30 ~~(d)~~

31 (i) If an employee in the motion picture industry or the  
32 broadcasting industry, as those industries are defined in Industrial  
33 Welfare Commission Wage Order Numbers 11 and 12, is covered  
34 by a valid collective bargaining agreement that provides for meal  
35 periods and includes a monetary remedy if the employee does not  
36 receive a meal period required by the agreement, then the terms,  
37 conditions, and remedies of the agreement pertaining to meal  
38 periods apply in lieu of the applicable provisions pertaining to  
39 meal periods of subdivision (a) of this section, Section 226.7, and  
40 Industrial Welfare Commission Wage Order Numbers 11 and 12.

1     ~~(e)~~

2     (j) Subdivisions (a) and (b) do not apply to an employee  
3 specified in subdivision ~~(f)~~ (k) if both of the following conditions  
4 are satisfied:

5     (1) The employee is covered by a valid collective bargaining  
6 agreement.

7     (2) The valid collective bargaining agreement expressly provides  
8 for the wages, hours of work, and working conditions of  
9 employees, and expressly provides for meal periods for those  
10 employees, final and binding arbitration of disputes concerning  
11 application of its meal period provisions, premium wage rates for  
12 all overtime hours worked, and a regular hourly rate of pay of not  
13 less than 30 percent more than the state minimum wage rate.

14     ~~(f)~~

15     (k) Subdivision ~~(e)~~ (j) applies to each of the following  
16 employees:

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

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

19     (3) An employee employed in the security services industry as  
20 a security officer who is registered pursuant to Chapter 11.5  
21 (commencing with Section 7580) of Division 3 of the Business  
22 and Professions Code, and who is employed by a private patrol  
23 operator registered pursuant to that chapter.

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

26     ~~(g)~~

27     (l) The following definitions apply for the purposes of this  
28 section:

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

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

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

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

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

5 SEC. 2. No reimbursement is required by this act pursuant to  
6 Section 6 of Article XIII B of the California Constitution because  
7 the only costs that may be incurred by a local agency or school  
8 district will be incurred because this act creates a new crime or  
9 infraction, eliminates a crime or infraction, or changes the penalty  
10 for a crime or infraction, within the meaning of Section 17556 of  
11 the Government Code, or changes the definition of a crime within  
12 the meaning of Section 6 of Article XIII B of the California  
13 Constitution.