

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 389

Introduced by Senator Dutton

February 15, 2011

An act to amend ~~Section 512 of the Labor Code, relating to employment. Sections 512, 553, and 2699.5 of, to add Section 512.3 to, and to repeal Section 226.7 of, the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law requires employers to provide meal periods and rest periods, as specified. Existing law requires an employer who fails to provide a meal period or a rest period to pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided. Under existing law, an employer who fails to provide a required meal period may be guilty of a misdemeanor.

This bill would provide that the maximum compensation an employee may receive for the employer's failure to provide a meal or rest period in a workday is one additional hour of pay. This bill would also provide that the payment of that additional one hour of pay per workday in which the employer failed to provide a meal period or a rest period would constitute compliance with any requirement to provide an employee with a meal period or rest period and is the exclusive remedy for that failure to provide a meal period or rest period and would no longer constitute a misdemeanor.

This bill would declare that it is to take effect immediately as an urgency statute.

~~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~~^{2/3}. Appropriation: no. Fiscal committee: ~~yes~~^{no}. State-mandated local program: ~~yes~~^{no}.

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

1 ~~SECTION 1. Section 226.7 of the Labor Code is repealed.~~

2 ~~226.7. (a) No employer shall require any employee to work~~
3 ~~during any meal or rest period mandated by an applicable order~~
4 ~~of the Industrial Welfare Commission.~~

5 ~~(b) If an employer fails to provide an employee a meal period~~
6 ~~or rest period in accordance with an applicable order of the~~
7 ~~Industrial Welfare Commission, the employer shall pay the~~
8 ~~employee one additional hour of pay at the employee's regular~~
9 ~~rate of compensation for each work day that the meal or rest period~~
10 ~~is not provided.~~

11 ~~SEC. 2. Section 512 of the Labor Code is amended to read:~~

12 ~~512. (a) An employer may not employ an employee for a work~~
13 ~~period of more than five hours per day without providing the~~
14 ~~employee with a meal period of not less than 30 minutes, except~~
15 ~~that if the total work period per day of the employee is no more~~
16 ~~than six hours, the meal period may be waived by mutual consent~~
17 ~~of both the employer and employee. An employer may not employ~~
18 ~~an employee for a work period of more than 10 hours per day~~
19 ~~without providing the employee with a second meal period of not~~
20 ~~less than 30 minutes, except that if the total hours worked is no~~
21 ~~more than 12 hours, the second meal period may be waived by~~
22 ~~mutual consent of the employer and the employee only if the first~~
23 ~~meal period was not waived.~~

24 ~~(b) Notwithstanding subdivision (a), the Industrial Welfare~~
25 ~~Commission may adopt a working condition order permitting a~~
26 ~~meal period to commence after six hours of work if the commission~~
27 ~~determines that the order is consistent with the health and welfare~~
28 ~~of the affected employees.~~

29 ~~(c) Subdivision (a) does not apply to an employee in the~~
30 ~~wholesale baking industry who is subject to an Industrial Welfare~~

1 Commission wage order and who is covered by a valid collective
2 bargaining agreement that provides for a 35-hour workweek
3 consisting of five 7-hour days, payment of one and one-half times
4 the regular rate of pay for time worked in excess of seven hours
5 per day, and a rest period of not less than 10 minutes every two
6 hours.

7 (d) If an employee in the motion picture industry or the
8 broadcasting industry, as those industries are defined in Industrial
9 Welfare Commission Wage Order Numbers 11 and 12, is covered
10 by a valid collective bargaining agreement that provides for meal
11 periods and includes a monetary remedy if the employee does not
12 receive a meal period required by the agreement, then the terms,
13 conditions, and remedies of the agreement pertaining to meal
14 periods apply in lieu of the applicable provisions pertaining to
15 meal periods of subdivision (a) of this section, Section ~~226.7~~ 512.3,
16 and Industrial Welfare Commission Wage Order Numbers 11 and
17 12.

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

21 (1) The employee is covered by a valid collective bargaining
22 agreement.

23 (2) The valid collective bargaining agreement expressly provides
24 for the wages, hours of work, and working conditions of
25 employees, and expressly provides for meal periods for those
26 employees, final and binding arbitration of disputes concerning
27 application of its meal period provisions, premium wage rates for
28 all overtime hours worked, and a regular hourly rate of pay of not
29 less than 30 percent more than the state minimum wage rate.

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

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

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

33 (3) An employee employed in the security services industry as
34 a security officer who is registered pursuant to Chapter 11.5
35 (commencing with Section 7580) of Division 3 of the Business
36 and Professions Code, and who is employed by a private patrol
37 operator registered pursuant to that chapter.

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

1 (g) The following definitions apply for the purposes of this
2 section:

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

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

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

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

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

19 *SEC. 3. Section 512.3 is added to the Labor Code, to read:*

20 *512.3. (a) An employer shall not require an employee to work*
21 *during any meal or rest period mandated by Section 512 or an*
22 *applicable order of the Industrial Welfare Commission.*

23 *(b) If an employer fails to provide an employee a meal period*
24 *or rest period in accordance with an applicable order of the*
25 *Industrial Welfare Commission, the employer shall pay the*
26 *employee one additional hour of pay at the employee’s regular*
27 *rate of compensation for each workday that the meal or rest period*
28 *is not provided. The maximum compensation an employee may*
29 *receive under this section for each workday is one additional hour*
30 *of pay. Payment of this one additional hour of pay shall constitute*
31 *compliance with any requirement to provide an employee with a*
32 *meal period or a rest period and shall be the exclusive remedy for*
33 *failure to provide a meal period or a rest period.*

34 *SEC. 4. Section 553 of the Labor Code is amended to read:*

35 *553. ~~Any~~ Except as provided in Section 512.3, any person who*
36 *violates this chapter is guilty of a misdemeanor.*

37 *SEC. 5. Section 2699.5 of the Labor Code is amended to read:*

38 *2699.5. The provisions of subdivision (a) of Section 2699.3*
39 *apply to any alleged violation of the following provisions:*
40 *subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5,*

1 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
2 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section
3 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of
4 Section 226, Sections ~~226.7~~, 227, 227.3, 230, 230.1, 230.2, 230.3,
5 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
6 subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and
7 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7,
8 435, 450, 510, 511, 512, 512.3, 513, 551, 552, 601, 602, 603, 604,
9 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973,
10 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153,
11 subdivisions (c) and (d) of Section 1174, Sections 1194, 1197,
12 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3,
13 Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1,
14 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309,
15 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision
16 (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8,
17 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31,
18 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of
19 subdivision (a) of, and subdivision (e) of, Section 1701.4,
20 subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10,
21 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and
22 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800,
23 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and
24 Sections 3095, 6310, 6311, and 6399.7.

25 *SEC. 6. This act is an urgency statute necessary for the*
26 *immediate preservation of the public peace, health, or safety within*
27 *the meaning of Article IV of the Constitution and shall go into*
28 *immediate effect. The facts constituting the necessity are:*

29 *In order to address California's historically high unemployment*
30 *rate, reduce the number of employment-related lawsuits, and allow*
31 *businesses to return more people to work, it is necessary that this*
32 *act take effect immediately.*

1
2
3
4
5

**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, February 15, 2011. (JR11)**

O