

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 519

Introduced by Assembly Member Logue

February 20, 2013

An act to amend Section ~~512 of the Labor~~ 17206 of the Business and Professions Code, relating to ~~employment~~ unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 519, as amended, Logue. ~~Working hours: meal periods. Unfair competition.~~

Existing law makes a person who engages in unfair competition, as defined, liable for civil penalties. Existing law requires a court, in assessing the amount of the civil penalty, to consider one or more of specified relevant circumstances presented by any of the parties to the case.

This bill would additionally require the court, prior to the imposition of any civil penalty, to consider all factors in mitigation of both the imposition and amount of any civil penalty.

~~Existing law, subject to certain exceptions, prohibits an employer from requiring an employee to work more than 5 hours per day without providing a meal period and, notwithstanding that provision, authorizes the Industrial Welfare Commission to adopt a working condition order permitting a meal period to commence after 6 hours of work if the commission determines the order is consistent with the health and welfare of affected employees. Existing law exempts employees in certain occupations from these provisions.~~

~~This bill would make technical, nonsubstantive changes to the above provisions.~~

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 17206 of the Business and Professions
2 Code is amended to read:
3 17206. Civil Penalty for Violation of Chapter
4 (a) Any person who engages, has engaged, or proposes to engage
5 in unfair competition shall be liable for a civil penalty not to exceed
6 two thousand five hundred dollars (\$2,500) for each violation,
7 which shall be assessed and recovered in a civil action brought in
8 the name of the people of the State of California by the Attorney
9 General, by any district attorney, by any county counsel authorized
10 by agreement with the district attorney in actions involving
11 violation of a county ordinance, by any city attorney of a city
12 having a population in excess of 750,000, by any city attorney of
13 any city and county, or, with the consent of the district attorney,
14 by a city prosecutor in any city having a full-time city prosecutor,
15 in any court of competent jurisdiction.
16 (b) The court shall impose a civil penalty for each violation of
17 this chapter. In assessing the amount of the civil penalty, the court
18 shall consider any one or more of the relevant circumstances
19 presented by any of the parties to the case, including, but not
20 limited to, the following: the nature and seriousness of the
21 misconduct, the number of violations, the persistence of the
22 misconduct, the length of time over which the misconduct occurred,
23 the willfulness of the defendant’s misconduct, and the defendant’s
24 assets, liabilities, and net worth. *Prior to the imposition of any*
25 *civil penalty, the court shall consider all factors in mitigation of*
26 *both the imposition and amount of any civil penalty, including,*
27 *but not limited to, the magnitude of any actual harm to persons,*
28 *the reasonable efforts taken by the defendant to prevent any actual*
29 *harm to persons, and efforts undertaken by the defendant to*
30 *remediate or prevent future actual harm to persons.*
31 (c) If the action is brought by the Attorney General, one-half of
32 the penalty collected shall be paid to the treasurer of the county in
33 which the judgment was entered, and one-half to the General Fund.
34 If the action is brought by a district attorney or county counsel,
35 the penalty collected shall be paid to the treasurer of the county in

1 which the judgment was entered. Except as provided in subdivision
2 (e), if the action is brought by a city attorney or city prosecutor,
3 one-half of the penalty collected shall be paid to the treasurer of
4 the city in which the judgment was entered, and one-half to the
5 treasurer of the county in which the judgment was entered. The
6 aforementioned funds shall be for the exclusive use by the Attorney
7 General, the district attorney, the county counsel, and the city
8 attorney for the enforcement of consumer protection laws.

9 (d) The Unfair Competition Law Fund is hereby created as a
10 special account within the General Fund in the State Treasury. The
11 portion of penalties that is payable to the General Fund or to the
12 Treasurer recovered by the Attorney General from an action or
13 settlement of a claim made by the Attorney General pursuant to
14 this chapter or Chapter 1 (commencing with Section 17500) of
15 Part 3 shall be deposited into this fund. Moneys in this fund, upon
16 appropriation by the Legislature, shall be used by the Attorney
17 General to support investigations and prosecutions of California's
18 consumer protection laws, including implementation of judgments
19 obtained from such prosecutions or investigations and other
20 activities which are in furtherance of this chapter or Chapter 1
21 (commencing with Section 17500) of Part 3. Notwithstanding
22 Section 13340 of the Government Code, any civil penalties
23 deposited in the fund pursuant to the National Mortgage Settlement,
24 as provided in Section 12531 of the Government Code, are
25 continuously appropriated to the Department of Justice for the
26 purpose of offsetting General Fund costs incurred by the
27 Department of Justice.

28 (e) If the action is brought at the request of a board within the
29 Department of Consumer Affairs or a local consumer affairs
30 agency, the court shall determine the reasonable expenses incurred
31 by the board or local agency in the investigation and prosecution
32 of the action.

33 Before any penalty collected is paid out pursuant to subdivision
34 (c), the amount of any reasonable expenses incurred by the board
35 shall be paid to the Treasurer for deposit in the special fund of the
36 board described in Section 205. If the board has no such special
37 fund, the moneys shall be paid to the Treasurer. The amount of
38 any reasonable expenses incurred by a local consumer affairs
39 agency shall be paid to the general fund of the municipality or
40 county that funds the local agency.

1 (f) If the action is brought by a city attorney of a city and county,
 2 the entire amount of the penalty collected shall be paid to the
 3 treasurer of the city and county in which the judgment was entered
 4 for the exclusive use by the city attorney for the enforcement of
 5 consumer protection laws. However, if the action is brought by a
 6 city attorney of a city and county for the purposes of civil
 7 enforcement pursuant to Section 17980 of the Health and Safety
 8 Code or Article 3 (commencing with Section 11570) of Chapter
 9 10 of Division 10 of the Health and Safety Code, either the penalty
 10 collected shall be paid entirely to the treasurer of the city and
 11 county in which the judgment was entered or, upon the request of
 12 the city attorney, the court may order that up to one-half of the
 13 penalty, under court supervision and approval, be paid for the
 14 purpose of restoring, maintaining, or enhancing the premises that
 15 were the subject of the action, and that the balance of the penalty
 16 be paid to the treasurer of the city and county.

17 SECTION 1. ~~Section 512 of the Labor Code is amended to~~
 18 ~~read:~~

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

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

36 ~~(c) Subdivision (a) does not apply to an employee in the~~
 37 ~~wholesale baking industry who is subject to an Industrial Welfare~~
 38 ~~Commission wage order and who is covered by a valid collective~~
 39 ~~bargaining agreement that provides for a 35-hour workweek~~
 40 ~~consisting of five 7-hour days, payment of one and one-half times~~

1 the regular rate of pay for time worked in excess of seven hours
2 per day, and a rest period of not less than 10 minutes every two
3 hours.

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

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

17 (1) The employee is covered by a valid collective bargaining
18 agreement.

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

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

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

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

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

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

36 (g) The following definitions apply for the purposes of this
37 section:

38 (1) "Commercial driver" means an employee who operates a
39 vehicle described in Section 260 or 462 of, or subdivision (b) of
40 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.~~