

Introduced by Senator PadillaFebruary 21, 2013

An act to amend Section 226.7 of the Labor Code, relating to compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 435, as introduced, Padilla. Compensation: piece-rate workers: rest and recovery periods.

Existing law prohibits an employer from requiring an employee to work during any meal or rest period mandated by an order of the Industrial Welfare Commission (IWC) and establishes penalties for an employer's failure to provide a mandated meal or rest period. Existing law establishes the Division of Labor Standards Enforcement (DLSE) in the Department of Industrial Relations for the enforcement of labor laws, including wage claims.

This bill would make that prohibition applicable to any meal or rest or recovery period mandated by applicable statute or applicable regulation, standard, or order of the IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The bill would require employers to pay employees for any rest period mandated by law, including any applicable statute or applicable regulation, standard, or order of the IWC, the board, or the Division of Occupational Safety and Health, that is not provided. The bill would require the rate of pay for the rest and recovery periods of piece-rate workers to be the average piece-rate wage, as specified. The bill would authorize a piece-rate worker, pursuant to a civil action or a claim filed with DLSE, to recover his or her unpaid average piece-rate wage for each rest or recovery period in which a violation of these provisions occurred. The bill would provide that it does not apply to an employee

whose wages, hours, and working conditions are covered by a collective bargaining agreement that expressly addresses rest or recovery periods for employees paid on a piece-rate basis.

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

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

1 SECTION 1. Section 226.7 of the Labor Code is amended to
 2 read:

3 226.7. (a) ~~No~~As used in this section, “piece-rate basis” means
 4 a method of payment based on units of production earned by an
 5 employee during a work day or a pay period, or any fraction
 6 thereof. “Unit of production” means any measurable or
 7 quantifiable employee activity that can be assigned a monetary
 8 value for purposes of computing pay for activity performed by the
 9 employee during a work day or pay period or fraction thereof.

10 (b) An employer shall not require any employee to work during
 11 any meal or rest or recovery period mandated by an pursuant to
 12 any applicable statute, or applicable regulation, standard, or order
 13 of the Industrial Welfare Commission, the Occupational Safety
 14 and Health Standards Board, or the Division of Occupational
 15 Safety and Health.

16 ~~(b)~~
 17 (c) If an employer fails to provide an employee a meal period
 18 or rest period in accordance with an any state law, including, but
 19 not limited to, any applicable statute or applicable regulation,
 20 standard, or order of the Industrial Welfare Commission, the
 21 Occupational Safety and Health Standards Board, or the Division
 22 of Occupational Safety and Health, the employer shall pay the
 23 employee one additional hour of pay at the employee’s regular
 24 rate of compensation for each work day that the meal or rest or
 25 recovery period is not provided.

26 (d) (1) Rest or recovery periods mandated pursuant to any state
 27 law, including but not limited to, statute, or regulation, standard,
 28 or order of the Industrial Welfare Commission, the Occupational
 29 Safety and Health Standards Board, or the Division of
 30 Occupational Safety and Health, shall be counted as hours worked
 31 for which there shall be no deduction from wages. An employee
 32 working on a piece-rate basis shall be compensated for rest periods

1 *by being paid his or her average piece-rate wage during each pay*
2 *period, or portion of a pay period, in which the employee was paid*
3 *on a piece-rate basis.*

4 *(2) Pursuant to a civil action or a claim filed with the Division*
5 *of Labor Standards Enforcement, an employee working on a*
6 *piece-rate basis may recover his or her unpaid average piece-rate*
7 *wage for each rest or recovery period in any pay period in which*
8 *a violation of this subdivision occurred in addition to any amounts*
9 *owed pursuant to subdivision (c).*

10 *(e) This section does not apply to an employee whose wages,*
11 *hours, and working conditions are covered by a collective*
12 *bargaining agreement that expressly addresses rest or recovery*
13 *periods for employees paid on a piece-rate basis.*