

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 435

Introduced by Senator Padilla

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 435, as amended, 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, *or to employees exempt under specified law.*

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) As used in this section, ~~“piece-rate section:~~
 4 (1) *“Piece-rate basis”* means a method of payment based on
 5 units of production earned by an employee during a work day or
 6 a pay period, or any fraction thereof. ~~“Unit~~
 7 (2) *“Recovery period”* means a cooldown period afforded an
 8 employee to prevent heat illness.
 9 (3) *“Unit of production”* means any measurable or quantifiable
 10 employee activity that can be assigned a monetary value for
 11 purposes of computing pay for activity performed by the employee
 12 during a work day or pay period or fraction thereof.
 13 (b) An employer shall not require any employee to work during
 14 any meal or rest or recovery period mandated pursuant to any
 15 applicable statute, or applicable regulation, standard, or order of
 16 the Industrial Welfare Commission, the Occupational Safety and
 17 Health Standards Board, or the Division of Occupational Safety
 18 and Health.
 19 (c) If an employer fails to provide an employee a meal period
 20 or rest period in accordance with any state law, including, but not
 21 limited to, any applicable statute or applicable regulation, standard,
 22 or order of the Industrial Welfare Commission, the Occupational
 23 Safety and Health Standards Board, or the Division of Occupational
 24 Safety and Health, the employer shall pay the employee one
 25 additional hour of pay at the employee’s regular rate of
 26 compensation for each work day that the meal or rest or recovery
 27 period is not provided.
 28 (d) (1) Rest or recovery periods mandated pursuant to any state
 29 law, including, but not limited to, a statute, or a regulation,

1 standard, or order of the Industrial Welfare Commission, the
2 Occupational Safety and Health Standards Board, or the Division
3 of Occupational Safety and Health, shall be counted as hours
4 worked for which there shall be no deduction from wages. An
5 employee working on a piece-rate basis shall be compensated for
6 rest periods by being paid his or her average piece-rate wage during
7 each pay period, or portion of a pay period, in which the employee
8 was paid on a piece-rate basis.

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

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

19 (f) *This section does not apply to an employee who is exempt*
20 *pursuant to any state law, including, but not limited to, a statute*
21 *or a regulation, standard, or order of the Industrial Welfare*
22 *Commission.*