

AMENDED IN ASSEMBLY AUGUST 5, 2013

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: meal and~~ 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~~ *an employer* to pay ~~employees~~ *an employee*, for any *meal or rest or recovery* 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. one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest or recovery period is not provided. The bill would define “recovery period” for those purposes.~~

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

1 or the Division of Occupational Safety and Health, the employer
2 shall pay the employee one additional hour of pay at the
3 employee's regular rate of compensation for each workday that
4 the meal or rest or recovery period is not provided.

5 ~~(d) (1) Rest or recovery periods mandated pursuant to any state
6 law, including, but not limited to, a statute, or a regulation,
7 standard, or order of the Industrial Welfare Commission, the
8 Occupational Safety and Health Standards Board, or the Division
9 of Occupational Safety and Health, shall be counted as hours
10 worked for which there shall be no deduction from wages. An
11 employee working on a piece-rate basis shall be compensated for
12 rest periods by being paid his or her average piece-rate wage during
13 each pay period, or portion of a pay period, in which the employee
14 was paid on a piece-rate basis.~~

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

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

25 ~~(f) This section does not apply to an employee who is exempt
26 pursuant to any state law, including, but not limited to, a statute
27 or a regulation, standard, or order of the Industrial Welfare
28 Commission.~~

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