

AMENDED IN ASSEMBLY SEPTEMBER 9, 2015

AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

AMENDED IN SENATE APRIL 22, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 327

Introduced by Senator Hernandez
(Principal coauthor: Assembly Member Low)

February 23, 2015

An act to amend Section 516 of the Labor Code, relating to private ~~employment~~; *employment, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 327, as amended, Hernandez. Industrial Welfare Commission: wage orders: meal periods.

Existing law provides it is the continuing duty of the Industrial Welfare Commission to ascertain the wages paid to all employees in this state, to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed in this state, and to investigate the health, safety, and welfare of those employees. Existing law establishes the Division of Labor Standards Enforcement in the Department of Industrial Relations for *the* enforcement of labor laws, including orders of the commission. 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 commission to adopt a working condition order permitting a meal period to commence after 6 hours of work if the order is consistent with

the health and welfare of affected employees. Existing law, except as provided in that described meal period provision, authorizes the commission to adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers. Existing law requires the commission, by July 1, 2000, to adopt wage, hours, and working ~~conditions~~ *condition* orders necessary to ensure fairness in the establishment of employee workweek schedules. Existing law further requires the commission, by July 1, 2000, to conduct reviews of wages, hours, and working conditions in specified industries and to adopt or modify regulations necessary to protect the health, safety, and welfare of workers in those industries. Existing wage orders of the commission provide that employees in the health care industry who work shifts in excess of 8 total hours in a workday may voluntarily waive their right to 1 of their 2 meal periods in a prescribed manner. Existing law prohibits an employer from requiring an employee to work during a meal or rest or recovery period mandated by an applicable statute, or applicable regulation, standard, or order of the commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, and establishes penalties for an employer's failure to provide a mandated meal or rest or recovery period.

This bill would provide that the health care employee meal period waiver provisions in those existing wage orders were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable. The bill would state that the bill is declarative of, and clarifies, existing law.

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

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

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

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) From 1993 through 2000, Industrial Welfare Commission
- 3 Wage Orders 4 and 5 contained special meal period waiver rules
- 4 for employees in the health care industry. Employees were allowed
- 5 to waive voluntarily one of the two meal periods on shifts
- 6 exceeding 12 hours. On June 30, 2000, the Industrial Welfare
- 7 Commission adopted regulations allowing those rules to continue

1 in place. Since that time, employees in the health care industry
2 and their employers have relied on those rules to allow employees
3 to waive voluntarily one of their two meal periods on shifts
4 exceeding 12 hours.

5 (b) Given the uncertainty caused by a recent appellate court
6 decision, *Gerard v. Orange Coast Memorial Medical Center* (2015)
7 234 Cal.App.4th 285, without immediate clarification, hospitals
8 will alter scheduling practices.

9 SEC. 2. Section 516 of the Labor Code is amended to read:

10 516. (a) Except as provided in Section 512, the Industrial
11 Welfare Commission may adopt or amend working condition
12 orders with respect to break periods, meal periods, and days of
13 rest for any workers in California consistent with the health and
14 welfare of those workers.

15 (b) Notwithstanding subdivision (a), or any other law, including
16 Section 512, the health care employee meal period waiver
17 provisions in Section 11(D) of Industrial Welfare Commission
18 Wage Orders 4 and 5 were valid and enforceable on and after
19 October 1, 2000, and continue to be valid and enforceable. This
20 subdivision is declarative of, and clarifies, existing law.

21 *SEC. 3. This act is an urgency statute necessary for the*
22 *immediate preservation of the public peace, health, or safety within*
23 *the meaning of Article IV of the Constitution and shall go into*
24 *immediate effect. The facts constituting the necessity are:*

25 *In order to confirm and clarify the law applicable to meal period*
26 *waivers for employees in the health care industry throughout the*
27 *state, it is necessary that this act take effect immediately.*