

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 990

Introduced by Senator ~~Hollingsworth~~ Dutton

February 8, 2010

An act to amend Section 512 of the Labor Code, relating to employment, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 990, as amended, ~~Hollingsworth~~ Dutton. Employment: meal periods.

Existing law requires an employer to provide an employee who works more than 5 hours in a workday with a meal period of not less than 30 minutes, unless the employee works no more than 6 hours in a workday and the meal period is waived by mutual consent. An employer also is required to provide an employee who works more than 10 hours in a workday with a 2nd meal period of not less than 30 minutes, unless the employee works no more than 12 hours, the first meal period was not waived, and the 2nd meal period is waived by mutual consent. The Industrial Welfare Commission (IWC) of the Department of Industrial Relations adopts and amends wage orders that, among other things, specify how meal periods are required to be provided to covered employees within various industries, including the procedures for providing employees with on-duty meal periods. Existing law provides that a violation of these provisions is a misdemeanor.

This bill would revise the statutory requirements for the provision of meal periods to specify that the requirements apply only to employees subject to the meal period provisions of an order of the IWC. The statutory requirements for providing the meal periods would be revised

to specify that a meal period based on working more than 5 hours in a workday is required to be provided before the employee completes 6 hours of work, unless the existing waiver provision is invoked. The waiver provision for the 2nd meal period would be changed to provide an exception for different provisions within IWC wage orders in effect as of January 1, 2009, and to permit the employer and employee to agree to waive either the first or the 2nd meal period if the employee otherwise is entitled to 2 meal periods. The bill also would specify conditions under which on-duty meal periods are permitted rather than meal periods in which the employee is relieved of all duty. The meal period provisions of a valid collective bargaining agreement would be required to be implemented for covered employees rather than the statutory requirements.

The bill would require that orders of the IWC be interpreted in a manner consistent with this section, and would require the Department of Industrial Relations to amend and republish specified IWC wage orders to be consistent with the revised meal period requirements.

Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

~~Existing law requires an employer to provide an employee with one meal period during a work period of more than 5 hours and 2 meal periods during a work period of 10 hours, as prescribed.~~

~~This bill would make nonsubstantive changes to these provisions.~~

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

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

- 1 SECTION 1. Section 512 of the Labor Code is amended to
- 2 read:
- 3 512. (a) An employer ~~may~~ shall not employ an employee for
- 4 ~~a work period of~~ who is subject to the meal period provisions of

1 *an order of the Industrial Welfare Commission and who works*
2 *more than five hours per day in a workday without providing the*
3 *employee with a one off-duty meal period of not less than 30*
4 *minutes, except that if the total work period per day of the*
5 *employee is no more than six hours, the meal period may be waived*
6 *by mutual consent of both the employer and employee per workday*
7 *before the employee completes six hours of work. If an employee*
8 *works no more than six hours per workday, the employer and*
9 *employee may agree to waive the employer's duty of providing the*
10 *employee with a meal period. An employer may shall not employ*
11 *an employee for a work period of who is subject to the meal period*
12 *provisions of an order of the Industrial Welfare Commission and*
13 *who works more than 10 hours per day in a workday without*
14 *providing the employee with a second off-duty meal period of not*
15 *less than 30 minutes, except that if the total hours worked is no*
16 *more than 12 hours, the second meal period may be waived by*
17 *mutual consent of the employer and the employee only if the first*
18 *meal period was not waived. Except as authorized by an Industrial*
19 *Welfare Commission wage order in effect as of January 1, 2009,*
20 *if an employee works no more than 12 hours in a workday, the*
21 *employer and employee may agree to waive the employer's duty*
22 *of providing the employee with either the first or the second meal*
23 *period, but not both.*

24 *(b) For purposes of this section, the following terms have the*
25 *following meanings:*

26 *(1) "Off-duty meal period" means a meal period of not less*
27 *than 30 minutes during which the employee is relieved of all duty.*

28 *(2) "Providing the employee with" means making available to*
29 *the employee.*

30 *(c) An on-duty meal period shall qualify as a lawful meal period*
31 *under subdivision (a) for an employee covered by an Industrial*
32 *Welfare Commission wage order that authorizes an on-duty meal*
33 *period if all of the following conditions are satisfied:*

34 *(1) The employer and the employee have entered into a written*
35 *agreement for an on-duty meal period which includes a statement*
36 *that the employee may revoke the agreement in writing with no*
37 *less than three business days' notice to the employer if the*
38 *applicable Industrial Welfare Commission wage order authorizes*
39 *the employee to revoke the agreement.*

40 *(2) The employee has an opportunity to eat while on duty.*

1 (3) *The on-duty meal period is counted as time worked.*

2 (4) *The nature of the work prevents the employee from being*
3 *relieved of all duty.*

4 (d) *The nature of an employee’s work is deemed to prevent that*
5 *employee from being relieved of all duty, pursuant to paragraph*
6 *(4) of subdivision (c), if at least one of the following conditions*
7 *exists:*

8 (1) *The employee works alone or is the only person in the*
9 *employee’s job classification who is on duty at the location or in*
10 *the department, or there are no other qualified employees who*
11 *can reasonably relieve the employee of all duty.*

12 (2) *State or federal law imposes a requirement that the employee*
13 *remain on duty at all times.*

14 (3) *The nature of the work creates an imminent danger or makes*
15 *it unsafe for the employee, the public, or the environment if the*
16 *employee is relieved of all duty.*

17 (4) *The work product or processing of the product, including*
18 *the transport or delivery of the product, will be destroyed or*
19 *damaged if the employee is relieved of all duty.*

20 (5) *The employee has direct responsibility for children who are*
21 *under 18 years of age or who are not emancipated from the foster*
22 *care system and who, in either case, are receiving 24-hour*
23 *residential care, or is employed at a 24-hour residential care*
24 *facility for the elderly, blind, or developmentally disabled*
25 *individuals.*

26 (e) *If an employee is entitled to two meal periods pursuant to*
27 *subdivision (a), both meal periods may be on-duty meal periods*
28 *if the requirements of subdivision (c) are met.*

29 (f) *This section does not apply to an employee covered by a*
30 *valid collective bargaining agreement that includes provisions*
31 *pertaining to meal periods. The terms, conditions, and remedies*
32 *of the collective bargaining agreement pertaining to meal periods*
33 *apply instead.*

34 (g) *All orders of the Industrial Welfare Commission shall be*
35 *interpreted in a manner consistent with this section. The*
36 *Department of Industrial Relations shall amend and republish*
37 *Industrial Welfare Commission Wage Order Numbers 1 to 13,*
38 *inclusive, and 15 to 17, inclusive, to be consistent with this section,*
39 *but shall make no other changes to the wage orders.*

40 (b)

1 (h) Notwithstanding subdivision (a), the Industrial Welfare
2 Commission may adopt a working condition order permitting a
3 meal period to commence after six hours of work if the commission
4 determines that the order is consistent with the health and welfare
5 of the affected employees.

6 (e)

7 (i) Subdivision (a) does not apply to an employee in the
8 wholesale baking industry who is subject to an Industrial Welfare
9 Commission wage order and who is covered by a valid collective
10 bargaining agreement that provides for a 35-hour workweek
11 consisting of five ~~seven-hour~~ 7-hour days, payment of ~~1 and~~¹/₂
12 ~~one and one-half~~ times the regular rate of pay for time worked in
13 excess of seven hours per day, and a rest period of not less than
14 10 minutes every two hours.

15 (d)

16 (j) If an employee in the motion picture industry or the
17 broadcasting industry, as those industries are defined in Industrial
18 Welfare Commission Wage ~~Orders~~ Order Numbers 11 and 12, is
19 covered by a valid collective bargaining agreement that provides
20 for meal periods and includes a monetary remedy if the employee
21 does not receive a meal period required by the agreement, then the
22 terms, conditions, and remedies of the agreement pertaining to
23 meal periods apply in lieu of the applicable provisions pertaining
24 to meal periods of subdivision (a) of this section, Section 226.7,
25 and Industrial Welfare Commission Wage ~~Orders~~ Order Numbers
26 11 and 12.

27 *SEC. 2. No reimbursement is required by this act pursuant to*
28 *Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district will be incurred because this act creates a new crime or*
31 *infraction, eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section 17556 of*
33 *the Government Code, or changes the definition of a crime within*
34 *the meaning of Section 6 of Article XIII B of the California*
35 *Constitution.*

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

1 *There is significant confusion over how the existing meal and*
2 *rest law should be implemented. This confusion leads to*
3 *unnecessary lawsuits and forces employees to take meal or rest*
4 *breaks while in the middle of tasks. Workers risk being*
5 *reprimanded, and even fired, if they do not take a break. Given*
6 *that this is a significant issue for employers and employees alike,*
7 *clarification is needed immediately.*

8 SECTION 1. ~~Section 512 of the Labor Code is amended to~~
9 ~~read:~~

10 512. (a) ~~An employer may not employ an employee for a work~~
11 ~~period of more than five hours per day without providing the~~
12 ~~employee with a meal period of not less than 30 minutes, except~~
13 ~~that if the total work period per day of the employee is no more~~
14 ~~than six hours, the meal period may be waived by mutual consent~~
15 ~~of both the employer and employee. An employer may not employ~~
16 ~~an employee for a work period of more than 10 hours per day~~
17 ~~without providing the employee with a second meal period of not~~
18 ~~less than 30 minutes, except that if the total hours worked is no~~
19 ~~more than 12 hours, the second meal period may be waived by~~
20 ~~mutual consent of the employer and the employee, but only if the~~
21 ~~first meal period was not waived.~~

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

27 (c) ~~Subdivision (a) does not apply to an employee in the~~
28 ~~wholesale baking industry who is subject to an Industrial Welfare~~
29 ~~Commission wage order and who is covered by a valid collective~~
30 ~~bargaining agreement that provides for a 35-hour workweek~~
31 ~~consisting of five 7-hour days, payment of one and one-half the~~
32 ~~regular rate of pay for time worked in excess of seven hours per~~
33 ~~day, and a rest period of not less than 10 minutes every two hours.~~

34 (d) ~~If an employee in the motion picture industry or the~~
35 ~~broadcasting industry, as those industries are defined in Industrial~~
36 ~~Welfare Commission Wage Orders 11 and 12, is covered by a~~
37 ~~valid collective bargaining agreement that provides for meal~~
38 ~~periods and includes a monetary remedy if the employee does not~~
39 ~~receive a meal period required by the agreement, the terms,~~
40 ~~conditions, and remedies of the agreement pertaining to meal~~

- 1 ~~periods apply in lieu of the applicable provisions pertaining to~~
- 2 ~~meal periods of subdivision (a) of this section, Section 226.7, and~~
- 3 ~~Industrial Welfare Commission Wage Orders 11 and 12.~~

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