

AMENDED IN SENATE MAY 4, 2011  
AMENDED IN SENATE APRIL 14, 2011

**SENATE BILL**

**No. 389**

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**Introduced by Senator Dutton**

February 15, 2011

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An act to amend Sections 512, 553, and 2699.5 of, to add Section 512.3 to, and to repeal Section 226.7 of, the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 389, as amended, Dutton. Employment: meal periods.

Existing law requires employers to provide meal periods and rest periods, as specified. Existing law requires an employer who fails to provide a meal period or a rest period to pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided. Under existing law, an employer who fails to provide a required meal period may be guilty of a misdemeanor.

~~This bill would provide that the maximum compensation an employee may receive for the employer's failure to provide a meal or rest period in a workday is one additional hour of pay. This bill would also provide that the payment of that additional one hour of pay per workday in which the employer failed to provide a meal period or a rest period would constitute compliance with any requirement to provide an employee with a meal period or rest period and is the exclusive remedy for that failure to provide a meal period or rest period and would no longer constitute a misdemeanor.~~

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

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

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

1 SECTION 1. Section 226.7 of the Labor Code is repealed.

2 SEC. 2. Section 512 of the Labor Code is amended to read:

3 512. (a) An employer may not employ an employee for a work  
4 period of more than 5 hours per day without providing the  
5 employee with a meal period of not less than 30 minutes, except  
6 that if the total work period per day of the employee is no more  
7 than 6 hours, the meal period may be waived by mutual consent  
8 of both the employer and employee. An employer may not employ  
9 an employee for a work period of more than 10 hours per day  
10 without providing the employee with a second meal period of not  
11 less than 30 minutes, except that if the total hours worked is no  
12 more than 12 hours, the second meal period may be waived by  
13 mutual consent of the employer and the employee only if the first  
14 meal period was not waived.

15 (b) Notwithstanding subdivision (a), the Industrial Welfare  
16 Commission may adopt a working condition order permitting a  
17 meal period to commence after six hours of work if the commission  
18 determines that the order is consistent with the health and welfare  
19 of the affected employees.

20 (c) Subdivision (a) does not apply to an employee in the  
21 wholesale baking industry who is subject to an Industrial Welfare  
22 Commission wage order and who is covered by a valid collective  
23 bargaining agreement that provides for a 35-hour workweek  
24 consisting of five 7-hour days, payment of one and one-half times  
25 the regular rate of pay for time worked in excess of 7 hours per  
26 day, and a rest period of not less than 10 minutes every 2 hours.

27 (d) If an employee in the motion picture industry or the  
28 broadcasting industry, as those industries are defined in Industrial  
29 Welfare Commission Wage Order Numbers 11 and 12, is covered  
30 by a valid collective bargaining agreement that provides for meal  
31 periods and includes a monetary remedy if the employee does not  
32 receive a meal period required by the agreement, then the terms,  
33 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 512.3, and  
3 Industrial Welfare Commission Wage Order Numbers 11 and 12.

4 (e) Subdivisions (a) and (b) do not apply to an employee  
5 specified in subdivision (f) if both of the following conditions are  
6 satisfied:

7 (1) The employee is covered by a valid collective bargaining  
8 agreement.

9 (2) The valid collective bargaining agreement expressly provides  
10 for the wages, hours of work, and working conditions of  
11 employees, and expressly provides for meal periods for those  
12 employees, final and binding arbitration of disputes concerning  
13 application of its meal period provisions, premium wage rates for  
14 all overtime hours worked, and a regular hourly rate of pay of not  
15 less than 30 percent more than the state minimum wage rate.

16 (f) Subdivision (e) applies to each of the following employees:

17 (1) An employee employed in a construction occupation.

18 (2) An employee employed as a commercial driver.

19 (3) An employee employed in the security services industry as  
20 a security officer who is registered pursuant to Chapter 11.5  
21 (commencing with Section 7580) of Division 3 of the Business  
22 and Professions Code, and who is employed by a private patrol  
23 operator registered pursuant to that chapter.

24 (4) An employee employed by an electrical corporation, a gas  
25 corporation, or a local publicly owned electric utility.

26 (g) The following definitions apply for the purposes of this  
27 section:

28 (1) “Commercial driver” means an employee who operates a  
29 vehicle described in Section 260 or 462 of, or subdivision (b) of  
30 Section 15210 of, the Vehicle Code.

31 (2) “Construction occupation” means all job classifications  
32 associated with construction by Article 2 (commencing with  
33 Section 7025) of Chapter 9 of Division 3 of the Business and  
34 Professions Code, including work involving alteration, demolition,  
35 building, excavation, renovation, remodeling, maintenance,  
36 improvement, and repair, and any other similar or related  
37 occupation or trade.

38 (3) “Electrical corporation” has the same meaning as provided  
39 in Section 218 of the Public Utilities Code.

1 (4) “Gas corporation” has the same meaning as provided in  
2 Section 222 of the Public Utilities Code.

3 (5) “Local publicly owned electric utility” has the same meaning  
4 as provided in Section 224.3 of the Public Utilities Code.

5 SEC. 3. Section 512.3 is added to the Labor Code, to read:

6 512.3. (a) An employer shall not require an employee to work  
7 during any meal or rest period mandated by Section 512 or an  
8 applicable order of the Industrial Welfare Commission.

9 (b) If an employer fails to provide an employee a meal period  
10 or rest period in accordance with an applicable order of the  
11 Industrial Welfare Commission, the employer shall pay the  
12 employee one additional hour of pay at the employee’s regular  
13 rate of compensation for each workday that the meal or rest period  
14 is not provided. ~~The maximum compensation an employee may  
15 receive under this section for each workday is one additional hour  
16 of pay.~~ Payment of this one additional hour of pay shall constitute  
17 compliance with any requirement to provide an employee with a  
18 meal period or a rest period and shall be the exclusive remedy for  
19 failure to provide a meal period or a rest period.

20 SEC. 4. Section 553 of the Labor Code is amended to read:

21 553. Except as provided in Section 512.3, any person who  
22 violates this chapter is guilty of a misdemeanor.

23 SEC. 5. Section 2699.5 of the Labor Code is amended to read:

24 2699.5. The provisions of subdivision (a) of Section 2699.3  
25 apply to any alleged violation of the following provisions:  
26 subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5,  
27 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,  
28 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section  
29 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of  
30 Section 226, Sections 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4,  
31 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision  
32 (c) of Section 232.5, Sections 233, 234, 351, 353, and 403,  
33 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435,  
34 450, 510, 511, 512, 512.3, 513, 551, 552, 601, 602, 603, 604, 750,  
35 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976,  
36 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153,  
37 subdivisions (c) and (d) of Section 1174, Sections 1194, 1197,  
38 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3,  
39 Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1,  
40 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309,

1 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision  
2 (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8,  
3 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31,  
4 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of  
5 subdivision (a) of, and subdivision (e) of, Section 1701.4,  
6 subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10,  
7 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and  
8 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800,  
9 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and  
10 Sections 3095, 6310, 6311, and 6399.7.

11 SEC. 6. This act is an urgency statute necessary for the  
12 immediate preservation of the public peace, health, or safety within  
13 the meaning of Article IV of the Constitution and shall go into  
14 immediate effect. The facts constituting the necessity are:

15 In order to address California’s historically high unemployment  
16 rate, reduce the number of employment-related lawsuits, and allow  
17 businesses to return more people to work, it is necessary that this  
18 act take effect immediately.