

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1948

Introduced by Assembly Member Wagner

February 12, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1948, as amended, Wagner. Compensation: meal and rest or recovery periods.

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 an applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health and establishes as a penalty for an employer's failure to provide a mandated meal or rest or recovery period the payment by the employer to the employee of one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

This bill would make that penalty the entire penalty amount to be awarded to an employee for a violation of that prohibition. The bill would prohibit the imposition of civil or criminal penalties under specific statutes if an employee recovers under these provisions, based on the same missed meal or rest period. The bill would require payment pursuant to these provisions to be considered a penalty for all purposes, including, but not limited to, the statute of limitations on an action.

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, “recovery period” means a
4 cooldown period afforded an employee to prevent heat illness.

5 (b) An employer shall not require an employee to work during
6 a meal or rest or recovery period mandated pursuant to an
7 applicable statute, or applicable regulation, standard, or order of
8 the Industrial Welfare Commission, the Occupational Safety and
9 Health Standards Board, or the Division of Occupational Safety
10 and Health.

11 (c) If an employer fails to provide an employee a meal or rest
12 or recovery period in accordance with a state law, including, but
13 not limited to, an applicable statute or applicable regulation,
14 standard, or order of the Industrial Welfare Commission, the
15 Occupational Safety and Health Standards Board, or the Division
16 of Occupational Safety and Health, the employer shall pay the
17 employee one additional hour of pay at the employee’s regular
18 rate of compensation for each workday that the meal or rest or
19 recovery period is not provided. This additional hour of pay at the
20 employee’s regular rate of compensation for each workday that
21 the meal or rest or recovery period is not provided shall be the
22 entire penalty amount awarded to the employee for a violation of
23 this section. If an employee recovers under this subdivision, no
24 civil or criminal penalty shall be imposed under Section 203, 225,
25 226, 558, or 2699 of this code, or under Chapter 5 (commencing
26 with Section 17200) of Part 2 of Division 7 of the Business and
27 Professions Code, based on the same missed meal or rest period.

28 (d) A rest or recovery period mandated pursuant to a state law,
29 including, but not limited to, an applicable statute, or applicable
30 regulation, standard, or order of the Industrial Welfare
31 Commission, the Occupational Safety and Health Standards Board,
32 or the Division of Occupational Safety and Health, shall be counted
33 as hours worked, for which there shall be no deduction from wages.
34 This subdivision is declaratory of existing law.

1 (e) This section shall not apply to an employee who is exempt
2 from meal or rest or recovery period requirements pursuant to
3 other state laws, including, but not limited to, a statute or
4 regulation, standard, or order of the Industrial Welfare
5 Commission.

6 (f) Payment pursuant to subdivision (c) shall be considered a
7 penalty for all purposes, including, but not limited to, the statute
8 of limitations on an action.

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