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AB-2605 Rest breaks: petroleum facilities: safety-sensitive positions. (2017-2018)

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Assembly Bill No. 2605

CHAPTER 584

An act to add and repeal Section 226.75 of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2018. Filed with Secretary of State September 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2605, Gipson. Rest breaks: petroleum facilities: safety-sensitive positions.

Existing law prohibits an employer from requiring an employee to work during a mandated meal or rest or recovery period, as specified. Existing law requires an employer who fails to provide an employee a mandated meal or rest or recovery 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 or recovery period was not provided. Existing law provides certain exemptions from these requirements.

This bill, until January 1, 2021, would exempt specified employees who hold a safety-sensitive position at a petroleum facility, as those terms are defined, from the rest and recovery period requirements. The bill would provide that for any rest or recovery period during which the employee was interrupted or forced to miss, the employer would be required to pay to the employee one additional hour of compensation at the employee's regular rate of pay.

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

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Industrial Welfare Commission Order No. 1-2001 Regulating Wages, Hours, and Working Conditions in the Manufacturing Industry governs employee rest periods at petroleum facilities. Section 12 of this order, as construed in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, requires that nonexempt employees be relieved of all duties during rest periods, including the duty to remain on call or carry radios or other forms of instant communication, or both.

(b) As part of the energy sector, petroleum facilities are considered critical infrastructure and key resources in relation to homeland security.

(c) Because of the nature of the processes at petroleum facilities, the chemicals stored onsite, and the critical nature of these facilities' infrastructure, it is necessary to enable an immediate and effective response to any emergencies or breaches of security that may occur.

(d) Current law as construed creates a potential hazard and present danger for operations at petroleum facilities, where on-shift employees in safety-sensitive positions must be reachable at all times in order to effectively protect employee and public health, safety, and welfare, and to avoid endangering local and national security due to unplanned events at these critical facilities.

(e) By hindering the instant communications that are necessary for a petroleum facility to respond effectively to serious emergencies such as process upsets, leaks, or possible fires or explosions, mandating rest periods for safety-sensitive employees with no ability to communicate with those employees would prevent these facilities from being able to effectively prevent and curtail emergencies or security incidents, creating both workplace, public safety, and national security concerns.

(f) To promote public and employee safety and facility security, it is necessary that employees holding safety-sensitive positions at petroleum facilities be required to be on call and carry instant communication devices during rest periods pursuant to the Occupational Safety and Health Standards Board's and the industry's longstanding best practices.

SEC. 2. Section 226.75 is added to the Labor Code, immediately following Section 226.7, to read:

226.75. (a) Notwithstanding any provision of this code or of Industrial Welfare Commission Wage Order No. 1, the requirement that employees must be relieved of all duties during rest periods shall not apply with respect to an employee holding a safety-sensitive position at a petroleum facility to the extent that the employee is required to carry and monitor a communication device, such as a radio, pager, or other form of instant communication, and to respond to emergencies, or is required to remain on employer premises to monitor the premises and respond to emergencies.

(b) If a nonexempt employee covered by this section is affirmatively required to interrupt his or her rest period to address an emergency, another rest period shall be authorized and permitted reasonably promptly after the circumstances that led to the interruption have passed. If circumstances do not allow for the employee to take such a rest period, the employer shall pay the employee one hour of pay at the employee's regular rate of pay for the rest period that was not provided.

(c) An employer that operates a petroleum facility shall include, as part of the itemized statement that the employer is required to furnish pursuant to subdivision (a) of Section 226, the total hours or pay owed to an employee, as described in subdivision (a), on account of a rest period which was not authorized or permitted for the reasons described in subdivision (b) or any other reason.

(d) For purposes of this section, the following definitions apply:

(1) "Petroleum facilities" means petroleum refineries, marine and onshore terminals handling crude oil and petroleum products, bulk marketing terminals, asphalt plants, gas plants, catalyst plants, carbon plants, and any other facility involved in the processing, refining, transport, or storage of crude oil or petroleum products.

(2) "Safety-sensitive position" means a job in which the employee's job duties reasonably include responding to emergencies at a petroleum facility.

(3) "Emergency" means a situation or event requiring prompt or immediate intervention to prevent or respond to a disruption in normal operations, which could cause harm to employees, equipment, the environment, or the community.

(e) This section shall apply only to employees subject to Industrial Welfare Commission Wage Order No. 1.

(f) This section also only applies to an employee specified in subdivision (a) if both of the following conditions are satisfied:

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

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

(g) This section shall not apply to existing cases filed before the effective date of this section.

(h) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

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

In order to urgently protect worker and public safety, to respond to the recent California Supreme Court decision in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, and to ensure that personnel in safety sensitive positions are available at all times while on site for the work day, it is necessary that this bill go into immediate effect.