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AB-1512 Security officers: rest periods. (2019-2020)

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Assembly Bill No. 1512

CHAPTER 343

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

[Approved by Governor September 30, 2020. Filed with Secretary of State September 30, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1512, Carrillo. Security officers: rest periods.

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.

Existing law, the Private Security Services Act, provides for the licensing and regulation of private security guards, private patrol operators, and armored contract carriers by the Bureau of Security and Investigative Services.

This bill, until January 1, 2027, would authorize a person employed as a security officer who is registered pursuant to the Private Security Services Act, and whose employer is a registered private patrol operator, to be required to remain on the premises during rest periods and to remain on call, and carry and monitor a communication device, during rest periods. The bill would require a security officer to be permitted to restart a rest period anew as soon as practicable if the officer's rest period is interrupted and would provide that a subsequent uninterrupted rest period satisfies the rest period obligation. If a security officer is not permitted to take an uninterrupted rest period of at least 10 minutes for every 4 hours worked or major fraction thereof, the bill would require the officer to be paid one additional hour of pay at the employee's regular base hourly rate of compensation. The bill would require that certain conditions be satisfied before these provisions apply, and would specify these provisions do not apply to cases filed before January 1, 2021.

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) Regulatory oversight of the California private security industry began in 1915 with the creation of the Detective Licensing Board. After several name changes, Assembly Bill No. 936 of the 1993–94 Regular Session formally renamed the organization as the Bureau of Security and Investigative Services.

(b) According to the United States Department of Labor's 2015 Occupational Outlook Handbook, the private security industry is predicted to grow 5 percent from 2014 to 2024, inclusive. According to the handbook, overall job opportunities should be excellent, especially for security officers. As of May 2015, California had the highest employment level for private security occupations, followed by New York, Texas, Florida, and Illinois.

(c) Security officers protect property, enforce rules on the property, and deter criminal activity. Some officers are assigned a stationary position from which they monitor alarms or surveillance cameras. Other officers are assigned a patrol area where they conduct security checks.

(d) A security officer's responsibilities vary depending on need. In retail stores, security officers may protect people, records, merchandise, money, and equipment. For many assignments the mere presence of security officers deters criminal events and promotes safety and security. They may work with undercover store detectives to prevent theft by customers and employees, detain shoplifting suspects until the police arrive, and patrol parking lots. In office buildings, banks, hotels, and hospitals, security officers may maintain order and protect the organization's customers, staff, and property. Security officers who work in museums and art galleries may protect paintings and exhibits by watching people and inspecting the contents of patrons' handbags. In factories and government buildings, security officers may protect workers and equipment and check the credentials of people and vehicles entering and leaving the premises. Some security officers are also licensed to be armed.

(e) Given the nature of the job duties and the possibility of emergencies, security officers must be able to respond quickly and call for assistance from police, fire, or ambulance services when necessary. In fact, security officers are often the first to respond to emergency situations.

(f) For the above-stated reasons, it is in the public interest that security officers are able to respond to emergency situations without delay. This may require security officers to remain on the premises and on call during paid rest periods, and to carry and monitor a communication device. Thus, it is the intent of the Legislature to abrogate, for the security services industry only, the California Supreme Court's decision in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, to the extent that decision is in conflict with this act.

SEC. 2. Section 226.7 of the Labor Code is amended to read:

226.7. (a) As used in this section, "recovery period" means a cooldown period afforded an employee to prevent heat illness.

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or 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.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or 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, the employer shall 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 is not provided.

(d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or 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, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

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

(f) (1) An employee employed in the security services industry as a security officer who is registered pursuant to the Private Security Services Act (Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code) and who is employed by a private patrol operator registered pursuant to that chapter, may be required to remain on the premises during rest periods and to remain on call, and carry and monitor a communication device during rest periods. If a security officer's rest period is interrupted, the security officer shall be permitted to restart the rest period anew as soon as practicable. The security officer's employer satisfies that rest period obligation if the security officer is then able to take an uninterrupted rest period. If on any workday a security officer is not permitted to take an uninterrupted rest period of at least 10 minutes for every four hours worked or major fraction thereof, then the security officer shall be paid one additional hour of pay at the employee's regular base hourly rate of compensation.

(2) For purposes of this subdivision, the term "interrupted" means any time a security officer is called upon to return to performing the active duties of the security officer's post prior to completing the rest period, and does not include simply being on the premises, remaining on call and alert, monitoring a radio or other communication device, or all of these actions.

(3) This subdivision only applies to an employee specified in paragraph (1) if both of the following conditions are satisfied:

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

(B) 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 one dollar more than the state minimum wage rate.

(4) This subdivision does not apply to existing cases filed before January 1, 2021.

(5) In enacting the legislation adding this subdivision, it is the intent of the Legislature to abrogate, for the security services industry only, the California Supreme Court's decision in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, to the extent that decision is in conflict with this subdivision.

(g) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.

SEC. 3. Section 226.7 is added to the Labor Code, to read:

226.7. (a) As used in this section, "recovery period" means a cooldown period afforded an employee to prevent heat illness.

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or 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.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or 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, the employer shall 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 is not provided.

(d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or 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, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

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

(f) This section shall be operative on January 1, 2027.

SEC. 4. 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 protect worker and public safety, to respond to the California Supreme Court decision in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, and to ensure that personnel in security officer positions are available at all times while onsite for the workday, it is necessary that this act take effect immediately.