

TITLE 8 CALIFORNIA CODE OF REGULATIONS  
Division of Labor Standards Enforcement

NOTICE OF PROPOSED RULEMAKING

The Division of Labor Standards Enforcement (DLSE) proposes to adopt the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PUBLIC HEARINGS

DLSE has scheduled three public hearings on this proposed action:

San Francisco

Date: Tuesday, February 8, 2005

Time: 9:00 a.m.

Place: Hiram Johnson State Building, Auditorium

455 Golden Gate Avenue, San Francisco, CA 94102

Los Angeles

Date: Friday, February 4, 2005

Time: 9:00 a.m.

Place: Ronald Reagan State Building, Auditorium

300 South Spring Street, Los Angeles, CA 90013

Fresno

Date: Wednesday, March 2, 2005

Time: 9:00 a.m.

Place: Fresno State Building, Room 1036

2550 Mariposa Mall

Fresno, CA 93721

Please note that public comment will begin promptly at 9:00 a.m. and will conclude when the last speaker has finished his or her presentation.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. DLSE requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

## WRITTEN COMMENT PERIOD

Any interested person, or authorized representative, may submit written comments to DLSE relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on March 2, 2005. All comments must be submitted in writing (by mail, fax or e-mail) and received by that time at DLSE's headquarters office. Submit comments to:

Allen Perlof, Senior Deputy Labor Commissioner  
Division of Labor Standards Enforcement, 9<sup>th</sup> Floor West  
P.O. Box 420603  
San Francisco, CA 94142  
E-mail: [dlsecomments@dir.ca.gov](mailto:dlsecomments@dir.ca.gov)  
FAX (415) 703-4807

Written comments received in connection with the December 31, 2004 notice, Notice File Number Z-04-1220-01, will be included for consideration in the January 14, 2005 notice.

### Proposed Regulatory Action

DLSE proposes to adopt section 13700, Meal and Rest Periods, in Title 8 of the California Code of Regulations.

DLSE proposes to adopt section 13700 to clarify that the one hour of pay an employer must pay an employee for each workday in which a meal or rest period is not provided in accordance with the applicable Industrial Welfare Commission Order is considered a penalty as well as to clarify the time parameters and criteria under which meal periods can be provided to employees.

### Authority And Reference

Labor Code sections 53, 54, 55, 59, 95, 98(a), 98.8, 1193.5, and 1198.4 authorize DLSE to promulgate the proposed regulation, which will implement, interpret and make specific Labor Code sections 226.7 and 512, as follows:

Labor Code section 53 provides that the Director of the Department of Industrial Relations is the "head of the department" for purposes of section 1001 and Part 1 (commencing with Section 11000) of Division 3 of Title 2 of the Government Code, including the provisions on administrative rulemaking, except for those matters which are specifically committed to one of the divisions of the department.

Labor Code section 54 authorizes the Director of the Department of Industrial Relations to perform all duties, exercise all powers and jurisdiction, assume and discharge all

responsibilities, and carry out and effect all purposes vested by law in the department, except as otherwise expressly provided.

Labor Code section 55 authorizes the Director of the Department of Industrial Relations, notwithstanding any provision in the Labor Code to the contrary, to require any division in the department to assist in the enforcement of any or all laws within the jurisdiction of the department. This section also authorizes the Director to make rules and regulations that are reasonably necessary to carry out the provisions of the Labor Code relating to the Department of Industrial Relations and to effectuate its purposes.

Labor Code section 59 mandates the Department of Industrial Relations, through its appropriate officers, to administer and enforce all laws imposing any duty, power, or function upon the offices or officers of the department.

Labor Code section 95(a) authorizes DLSE to enforce the provisions of the Labor Code and all labor laws of the state the enforcement of which is not specifically vested in any other officer, board or commission.

Labor Code section 98(a) authorizes the Labor Commissioner to investigate employee complaints.

Labor Code section 98.8 authorizes the Labor Commissioner to promulgate all regulations and rules of practice and procedure necessary to carry out the provisions of Chapter 4 of Division 1 of the Labor Code.

Labor Code section 1193.5 specifies that the provisions of Chapter 4 of Division 1 of the Labor Code shall be administered and enforced by DLSE.

Labor Code section 1198.4 provides that, upon request, the Chief of DLSE shall make available to the public any enforcement policy statements or interpretations of orders of the Industrial Welfare Commission.

The above cited Labor Code sections provide DLSE with the authority to interpret Labor Code sections 226.7 and 512 for purposes of enforcing these statutes. Furthermore, in the 1996 California Supreme Court case of Tidewater Marine Western, Inc. v. Victoria L. Bradshaw (14 Cal. 4<sup>th</sup> 557, 569-70), the Supreme Court provided:

“The DLSE’s primary function is enforcement, not rulemaking... Nevertheless, recognizing that enforcement requires some interpretation and that these interpretations should be uniform and available to the public, the Legislature empowered the DLSE to promulgate necessary ‘regulations and rules of practice and procedure.’”

The finding in the Tidewater case confirms that DLSE has the authority to interpret Labor Code sections 226.7 and 512 for purposes of interpreting these statutes for enforcement purposes.

## Informative Digest/Policy Statement Overview

Existing statute specifies that employers cannot allow employees to work more than five hours without providing a 30-minute meal period. Existing law is unclear as to the specific time parameters under which meal periods can be provided to employees. Furthermore, the law does not provide criteria to determine if an employer has met the statutory requirement of providing a meal period. Additionally, existing law does not define the term “work period.”

Existing statute provides that an employer who fails to provide an employee a meal period or rest period is required to pay the employee one additional hour of pay at the employee's regular rate of pay for each work day that the meal or rest period is not provided. Existing law has been the subject of conflicting interpretations as to whether the one hour of pay is to be considered a wage or penalty.

The proposed regulation would: (1) establish criteria to determine if an employer has met the requirement of providing a meal period; (2) clarify that the initial meal period in a workday may commence by the end of the sixth hour of the workday; (3) provide a definition of the term “work period”; and (4) clarify that the one hour of pay an employer must pay an employee for each workday in which a meal or rest period is not provided in accordance with the applicable Industrial Welfare Commission Order is considered a penalty.

## Disclosures Regarding The Proposed Action

### **Significant Statewide Adverse Economic Impact Directly Affecting Businesses:**

DLSE has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact on directly affected businesses, including the ability of California businesses to compete with businesses in other states.

### **Creation, Elimination, or Expansion of Jobs or Businesses (Results of Assessment under Government Code section 11346.3(b)):**

DLSE has made an initial determination that adoption of this regulation will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.

### **Effect On Small Business:**

DLSE has determined that the proposed regulation may affect small businesses.

### **Cost Impacts On Representative Private Persons Or Businesses:**

DLSE has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. DLSE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Local Mandate Determination:**

DLSE has determined that the proposed regulatory action does not impose any mandate on local agencies or school districts.

### **Costs on Local Agencies or School Districts:**

DLSE has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action. Furthermore, DLSE has determined that the proposed regulatory action does not impose costs on any local agency or school district which must be reimbursed in accordance with Government Code section 17561.

### **Cost Or Savings To State Agencies:**

DLSE has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

### **Effect On Federal Funding To The State:**

DLSE has determined that the proposed regulatory action results in no costs or savings in federal funding to the State.

### **Effect On Housing Costs:**

DLSE has made an initial determination that the adoption of this regulation will have no significant effect on housing costs.

## **CONSIDERATION OF ALTERNATIVES**

DLSE must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of DLSE, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action. DLSE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the hearings or during the written comment period.

## CONTACT PERSONS

The text of the proposed regulation, the initial statement of reasons, and the modified text of the regulation, if any, may be accessed at DLSE's website (<http://www.dir.ca.gov/dlse>). For those without Internet access, requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based should be directed to:

Allen Perlof, Senior Deputy Labor Commissioner  
Division of Labor Standards Enforcement, 9<sup>th</sup> Floor West  
P.O. Box 420603  
San Francisco, CA 94142  
Telephone: (415) 703-4810  
FAX (415) 703-4807

In the event the contact person is unavailable, inquiries regarding the proposed regulatory action should be directed to the following backup contact person:

Leslie Clements, Staff Services Manager  
Division of Labor Standards Enforcement, 9<sup>th</sup> Floor West  
P.O. Box 420603  
San Francisco, CA 94142  
Telephone: (415) 703-4810  
FAX (415) 703-4807

Inquiries concerning the substance of the proposed action may be directed to Allen Perlof at the address and phone number specified above.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

DLSE will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its San Francisco headquarters office at 455 Golden Gate Avenue, 9th Floor West, San Francisco, CA 94102, as specified herein. Additionally, this notice of proposed action, the initial statement of reasons, and the proposed text of the regulation are also available on the DLSE's website (<http://www.dir.ca.gov/dlse>). As of the date this notice is published in the Notice Register, the rulemaking file consists of: (1) this notice, (2) the proposed text of the regulation, (3) the initial statement of reasons, (4) veto message for Assembly Bill 3018; (5) Assembly Floor Analysis of AB 2509 as amended on August 25, 2000; (6) Portion of June 2000, minutes of the Industrial Welfare Commission; (7) DLSE memo rescinding certain opinion letters; and (8) Tidewater Marine Western, Inc. v. Victoria L. Bradshaw (14 Cal. 4<sup>th</sup> 557). Copies may be obtained by contacting Allen Perlof at the address or phone number listed above.

### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the public hearings and considering all timely and relevant comments received, DLSE may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which DLSE adopts the regulation. Requests for copies of the modified regulation, if any, should be sent to the attention of Allen Perlof at the address indicated above. DLSE will accept written comments on the modified regulation for 15 days after the date on which they are made available.

### AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on the DLSE's website (<http://www.dir.ca.gov/dlse>).