

DEPARTMENT OF INDUSTRIAL RELATIONS

MEAL AND REST BREAK PUBLIC FORUM

California State University, Northridge

August 9, 2007

Transcribed by: Leisa M. Miller

1 (ALL NAMES ARE SPELLED PHONETICALLY.)

2 COMMISSIONER BRADSTREET: Present construction  
3 employees to negotiate contractual meal period  
4 requirements. And just a few weeks ago, I think as  
5 recently as last month, in fact, several federal courts  
6 issued somewhat conflicting rulings that affect whether  
7 workers can independently decide if they voluntarily want  
8 to take their meal period as long as their employers  
9 actually make the meal period available to them.

10 All of this has led me to conclude that it is  
11 critical that I reach out to the people directly affected  
12 by these laws. I need to hear from you about how they  
13 affect both your work and personal lives today. I am  
14 looking forward to what each and every one of you has to  
15 say here today. What you have to say is very important.

16 Before we begin, I would like to outline the  
17 protocol we will follow for today's hearing, since we  
18 want to give everyone who wants to speak an opportunity  
19 to speak. So we have to have a general process that I'm  
20 sure you can understand.

21 Everyone who would like to speak, please fill out a  
22 sign-up sheet and submit it to one of our assistants  
23 around the room. Each person will be called up to give  
24 their presentation.

25 If you require any special accommodations, such as a

1 translator, please let us know so that we can make one  
2 available to you.

3 Where's Jeff? Jeff's back there. He's got his hand  
4 up. Okay. Any needs that you have, questions, please go  
5 see Jeff.

6 Due to time constraints and the number of people  
7 today who want to speak, each person will be allotted two  
8 and a half minutes to speak. We have a sizeable audience  
9 here today. And we need to finish by two o'clock.

10 Additionally, if you have further thoughts that you  
11 would like to share, or are uncomfortable sharing your  
12 views in public, we will be providing a form for you to  
13 fill out so that you may submit written testimony and  
14 written comments. Written comments and testimony will be  
15 taken until August 31, 2007. And there are forms on the  
16 table there that you can do that.

17 Legal briefing, we also encourage that. Again, the  
18 same thing. Legal briefing to be submitted by August 31,  
19 2007, on any issues that you think are significant.

20 Today's hearing will be focused on issues pertaining  
21 to California's meal and rest period laws. If you have  
22 additional issues that you would like to discuss, we will  
23 direct you to the appropriate regulatory body.

24 Here today I am very pleased that we have  
25 representatives from Cal OSHA, DLSE, EDD and DIR to

1 assist you. Could those representatives please stand,  
2 please? Could you stand so that -- make yourselves  
3 known? Okay. We have a number of representatives who  
4 I'm so pleased to hear are here. If anyone has any  
5 particular issues that are unrelated to this forum, they  
6 are available.

7 Finally, due to the volume of participants, we will  
8 only be taking very short breaks on an as-needed basis.  
9 And so we will -- our plan is to go straight through with  
10 maybe a couple of short breaks.

11 Thank you very much. And let's hear from our first  
12 person here today.

13 UNIDENTIFIED FEMALE: What we're going to do is  
14 we're going to call up five people at a time. So please  
15 take either side of the mic. And I apologize ahead of  
16 time if I mispronounce your name. Deanne McKuen, William  
17 Jackson, Jonathan Polido, Gloria Beltkren, and Neal  
18 Faringetina. If you could please come up?

19 MS. MCKUEN: Hi. Good morning, Commissioner  
20 Bradstreet. And thank you for holding these forums. My  
21 name's Deanne McKuen. I've been a Registered Nurse in  
22 California for 33 years. I'm an intensive care unit  
23 nurse. I've worked in pediatrics and adult intensive  
24 care.

25 I'm here to talk about the health and safety of the

1 patients of California and the professional practice of  
2 registered nursing. Under Title 16, California Code of  
3 Regulations, I'm here as required as a patient advocate.

4 Institute of Medicine National Academy's report  
5 "Keeping Patients Safe" identifies research findings on  
6 practices in safety sensitive areas such as nursing, and  
7 the fact that patient safety and human errors occur when  
8 adequate meal and rest time is not allowed.

9 The "Keeping Patients Safe" Institute of Medicine  
10 report cites significant number of studies that link  
11 fatigue to slowed reaction times, lapses of attention,  
12 errors of omission, and compromise the problem-solving  
13 ability of registered nurses.

14 The Agency for Healthcare Research and Quality  
15 conducted a technology assessment of the effect of  
16 healthcare working conditions on patient safety, and its  
17 literature review process resulted in the review of 730  
18 relevant healthcare studies. A hundred and fifteen of  
19 those studies were relevant to the key questions about  
20 work environment and patient safety.

21 As a direct care Registered Nurse, I've seen the  
22 effects of patient suffering, patients that die from the  
23 unintended consequences of regulatory practices where  
24 hospitals and hospital working environments ignore the  
25 laws that are in place that protect the health and safety

1 of patients and workers.

2 I think it's sad and I think it's unethical and  
3 illegal the way that our practice is affected where I've  
4 seen patients in the intensive care units pull out  
5 therapeutic devices that are necessary for them  
6 maintaining life. They pull out their airway tubes.  
7 They pull out IV access lines in trauma patients. They  
8 bleed. I've seen patients get out of bed and fall in  
9 intensive care unit, causing further injury. And I think  
10 that these are unintended consequences of an industry  
11 that puts profit ahead of patient safety.

12 And I am here to speak in favor of keeping the  
13 current regulations in place. Money seems to be the only  
14 thing that these employers understand. The penalty pay  
15 needs to stay. Because if it's not in place, they ignore  
16 flagrantly the regulations that are there that protect  
17 the health and safety of our patients. Thank you.

18 COMMISSIONER BRADSTREET: Thank you very much for  
19 being here. Thank you.

20 MS. BELTRAN: Hi. My name is Gloria Beltran. I've  
21 been with the transportation industry for 11 years. I'm  
22 here to speak on the lunch breaks. I think all  
23 employees -- drivers should be able to negotiate with  
24 their local unions on whether they should have lunches or  
25 not. Our drivers feel that being able to not take a

1 lunch allows them to get off work earlier and spend more  
2 time with their family, and take care of whatever  
3 appointments they need.

4 The same with anybody that -- who is in the union,  
5 they want to be allowed to negotiate with the union on  
6 their lunch breaks and rest periods. Thank you.

7 COMMISSIONER BRADSTREET: Thank you very much.

8 MS. FARNAJAPI: Good morning, Commissioner. My name  
9 is Nola Farnajapi, and I'm here on behalf of Ascent Media  
10 Group. We are a post-production creative environment  
11 that works on movies, music videos, commercials,  
12 television shows, the like.

13 As such, our employees are predominantly creative  
14 artists and computer skilled engineers. They work in  
15 client supervised sessions where they are adapting to  
16 whatever the client's needs -- excuse me, needs are and,  
17 you know, in a creative environment.

18 In addition, they experience significant amounts of  
19 down time, depending on the flow of the work and the  
20 creativity that they're experiencing, the needs of the  
21 client.

22 We have a non-manufacturing environment. We have  
23 kitchens where there's food. People come in, have  
24 breakfast and lunch. To require these employees to stop  
25 for half an hour in the middle of a client session is

1 seen as onerous to those employees. They are more  
2 bothered than they are appreciative. Especially because  
3 they have enough down time during the day to enjoy the  
4 kitchen and the facilities that we provide.

5 Separate and apart from those employees, we also  
6 have graveyard employees. And the graveyard employees  
7 are the ones I would say that have the most frustration  
8 with the current meal period regulations. From their  
9 perspective, they're working overnight. They don't want  
10 to stop for half an hour when they can leave a half hour  
11 or an hour early and go home and sleep.

12 And it's very difficult for me to have to tell  
13 someone in that position that they can't go home early  
14 and drive their children to school. They can't go home  
15 early and get more sleep, and the like.

16 So I think the flexibility that non-manufacturing  
17 employers give to their employees, and that their  
18 employees appreciate is lost given the current state of  
19 the regulations. I think the laws were very well written  
20 and made absolute sense years ago when California was  
21 dominated by a manufacturing landscape, where people had  
22 to pull a lever for eight hours in a row. But given that  
23 these days not all workplaces reflect that manufacturing  
24 environment, I think the regulations should be revised.  
25 Thank you very much.



1 COMMISSIONER BRADSTREET: Thank you very much.

2 MR. POLIDO: Good morning. My name is Jonathan  
3 Polido. I'm actually a Nurse Manager.

4 COMMISSIONER BRADSTREET: Good morning.

5 MR. POLIDO: Good morning. What's unique about  
6 nursing is that under the regulations DHS has that we  
7 need to have coverage when the nurses take their breaks.  
8 So in a regular med surge unit where you have maybe  
9 approximately 10 nurses on the floor, we need to find  
10 coverage for them to break. And with that said, for us  
11 to meet the fifth hour rule, we actually need to start  
12 breaking or having somebody go on their break, you know,  
13 an hour after they got report.

14 We start our shift around 7:00. We finish report  
15 about 7:30 more or less. You know, at 8:00, 8:30,  
16 depending on how many people we have on staff, we  
17 actually need to have somebody take their break.

18 I mean nursing has been dynamic. I mean there's a  
19 lot of changes in nursing, you know. It's not that the  
20 employers are not offering, you know, the meal or rest  
21 period. It is offered. But the fact that, you know,  
22 we're in healthcare, it makes it unique.

23 I mean what I'm looking for, or what I'm asking for,  
24 I guess, is some specific rules in regards to, you know,  
25 a hospital setting. Thank you.

1 COMMISSIONER BRADSTREET: Thank you very much.

2 MR. JACKSON: Good morning. My name is Bill  
3 Jackson. I'm an Operations Manager for a trucking  
4 company out of Bakersfield, California. I supervise  
5 approximately 100 people. I'm not only here on behalf of  
6 the company. I am here on behalf of my employees. This  
7 is something that's discussed almost on a daily basis in  
8 our office.

9 Trucking companies trust their employees. We send  
10 them out with --

11 FROM THE AUDIENCE: Will you speak louder, please?  
12 We can't hear you.

13 MR. JACKSON: Sure. We --

14 COMMISSIONER BRADSTREET: That's better.

15 MR. JACKSON: Okay. We give them control of 80,000  
16 pounds of equipment. We send them to places all around  
17 the state to make deliveries. We trust them to do this  
18 in a safe and timely manner. We trust them to bring our  
19 equipment back unscathed. But what we are not trusting  
20 them to do is to know when it's the proper time for them  
21 to take a lunch.

22 As everyone here I'm sure is well aware if they've  
23 driven the freeways or the roads/streets of California,  
24 LA, San Francisco, there's not a lot of places for truck  
25 drivers to pull off and park where they can safely take a

1 break for their lunch.

2 But we're telling them, no, you have no choice in  
3 this matter. You must take a break at this time period  
4 whether you're in a safe place to pull over, whether  
5 you're in a legal place to pull over, whether you want to  
6 come back early because, like the previous speaker said,  
7 to spend more quality time with their families.

8 I think we should give our transportation workers  
9 the option of when they feel that they're hungry, when  
10 they feel it is safe to take a break, when they feel it's  
11 proper or even legal. Because we have had drivers that  
12 have had -- gotten parking tickets from a local  
13 constabulary for illegal parking because they had to pull  
14 over and take their lunch break.

15 So I can't speak for other industries, but the  
16 trucking industry really needs some more leeway with  
17 this. I'm sure this was a good intentioned law when it  
18 was passed. But for transportation workers, mainly truck  
19 drivers, this is probably -- doesn't give them the leeway  
20 that they need. Thank you very much for your time.

21 COMMISSIONER BRADSTREET: Thank you very much.  
22 Could I ask that people, if they're going to talk, would  
23 you mind doing it outside? Because it's a little  
24 difficult to hear when there's a sort of buzz going on.  
25 So if you are going to talk, please don't do it when

1 people are speaking.

2 Also, I forgot to mention that please no applause  
3 for anybody. Let's just listen. So, thank you.

4 UNIDENTIFIED FEMALE: The next five speakers will be  
5 Diane Matkin, Maria Lopez, Mike Tyner, Art Polanski, and  
6 Mark Wilbur.

7 MS. MATKIN: Good morning. My name is Diane Matkin.  
8 I'm a Paralegal at Toyota Motor Sales. What we've run  
9 in -- we have flexible time where we're allowed to pick a  
10 schedule where we can arrive at work any time between  
11 7:30 -- or I'm sorry, 7 o'clock and 9:30 in the morning.

12 With the rigid five-hour lunch period, it then  
13 creates problems for us with scheduling meetings, with  
14 even having lunch with our friends, with talking to  
15 outside counsel who are on the East Coast where we have  
16 situations where we have people that actually have to  
17 either be told to leave meetings, or have to get up in  
18 the middle of a meeting to leave in order to comply with  
19 the meal break requirement.

20 We also, because of our flexible schedules, would  
21 like the flexibility to be able to decide that we can  
22 work through our lunches, and are able to leave early so  
23 that we can take care of child care issues, or even just  
24 run errands. Trying to get to someplace that closes at  
25 six o'clock is impossible currently.

1           So we would just like the flexibility to be treated  
2 as people who can make our own decisions about what time  
3 we take our lunch. Thank you.

4           COMMISSIONER BRADSTREET: Are you speaking on behalf  
5 of all employees or --

6           MS. MATKIN: A lot of the --

7           COMMISSIONER BRADSTREET: -- who are you speaking on  
8 behalf of?

9           MS. MATKIN: On behalf of myself, and also on behalf  
10 of my colleagues and other paralegals at Toyota, who  
11 we've discussed the situation to.

12           COMMISSIONER BRADSTREET: Okay. Thank you.

13           MS. MATKIN: Thank you.

14           MR. WILBUR: Good morning. My name is Mark Wilbur.  
15 I'm the President and Chief Executive Officer of  
16 Employers Group headquartered here in Los Angeles.

17           COMMISSIONER BRADSTREET: Good morning.

18           MR. WILBUR: Good morning. We represent more than  
19 3500 companies and well in excess of 2.4 million  
20 employees across the great state of California. We also  
21 have a -- we've been around for 111 years handling  
22 employee issues -- employer issues for decades, quite  
23 frankly.

24           And we have a live help line that handles thousands  
25 of HR compliance questions throughout the year. The meal

1 and rest period is one of the main topics of discussion  
2 on a regular basis.

3 COMMISSIONER BRADSTREET: I'm sorry. Excuse me.  
4 Would you mind moving away from the mic? Because it's  
5 picking up your -- if you could just move over while  
6 you're translating? I'm having a hard time hearing. If  
7 you don't mind? Just -- if you could just move over?  
8 And keep translating. It's just the mic's picking it up.  
9 Thank you.

10 Sorry. Go ahead.

11 MR. WILBUR: It's not a problem. The critical word  
12 that is coming up over and over and over again at this  
13 point is flexibility. The flexibility in the -- in the  
14 current law is just not there. And it's not allowing  
15 people to make basic decisions.

16 And oftentimes you'll have -- you know, the DLSE  
17 faces situations where it's employer versus employee  
18 often. This is not that case. This is one of those rare  
19 opportunities where it's employees and employers standing  
20 side by side going, you know what, I don't have the  
21 flexibility in planning my day.

22 And I heard the example, which we have had tons of  
23 examples of, where people want to leave 15 minutes early,  
24 so they want to work that timeframe to be able to leave  
25 early to go take their kids, or see their doctor, or what

1 have you. And those kind of flexibility things are gone.

2 We don't live in a black-and-white world anymore.

3 It is very much gray oftentimes. And I think providing  
4 that kind of level of flexibility to employers so they  
5 can support their employees in their endeavors and the  
6 things that they're trying to do to manage their time and  
7 still do a good job I think is really the criticality of  
8 what we need to have going forward.

9 So even the DLSE on this particular case on  
10 questions three and four on your website under the facts  
11 section, you're clearly getting employee questions, not  
12 just employer questions. So this is a critical area to  
13 provide flexibility to employers and to employees to have  
14 a better work life balance going forward. Thank you.

15 COMMISSIONER BRADSTREET: One question.

16 MR. WILBUR: Yeah.

17 COMMISSIONER BRADSTREET: Are you hearing of any of  
18 your employers actually disciplining employees because  
19 they're not actually taking the required full 30-minute  
20 meal breaks, and even in some cases being fired?

21 MR. WILBUR: Not the firing. You know, reprimands  
22 come because, quite frankly, the liability is big. I  
23 mean, you know, we've had cases now recently that, you  
24 know, it's right there. So not the firing. Not at all.  
25 But I've had people say, look, you know what, you're

1 going to take that break, period. And without regard to  
2 the kind of flexibility you try and provide.

3 In almost all cases -- it's funny. If you look back  
4 over the decades of our organization, you know, the  
5 changing workforce in California has dramatically changed  
6 in how employers manage employees, and how employees  
7 enjoy their work time. We live in the great state of  
8 California. We're here because we like to do  
9 skateboarding and bike riding and things like that and  
10 enjoy the weather.

11 But this is such a Draconian way to manage employees  
12 that it just makes it very difficult to provide that  
13 flexibility. The only things we really had is where --  
14 it's not even so much of a reprimand. It's mandating  
15 that they take that time, regardless of the consequences  
16 to flexibility or what they're trying to do in their  
17 lives, and trying to work through their employment.

18 COMMISSIONER BRADSTREET: Thank you very much.

19 MR. WILBUR: You bet. Thank you.

20 MS. LOPEZ: (Through an interpreter.) Good morning.

21 COMMISSIONER BRADSTREET: Good morning.

22 MS. LOPEZ: My name is Maria Lopez. I come from the  
23 Valley of Coachella. I am -- I work in the fields. My  
24 problem is about the rest periods that are given to the  
25 people who work in the fields. They don't take -- they



1 don't give us time of rest. For example, we go to work  
2 at five o'clock in the morning. At 9:30 they give us  
3 lunch. At 12:00 we have another 10 minutes rest.

4 And in summertime, you know, the temperatures soar  
5 to 110, 120. And they have to rest continuously. And  
6 the manager, because he needs to have quantity, boxes  
7 after boxes, and he's not interested about a worker  
8 because he's interested in the boxes. Because of that, I  
9 came here to ask you to take care of us field workers, to  
10 help us. I would like for you to come over and see us to  
11 verify how is the situation of the field worker. Thank  
12 you.

13 COMMISSIONER BRADSTREET: Thank you. I'd love to  
14 come and see you. In fact, we're coming there -- where  
15 are you located, ma'am? We'd love to come see you.

16 MS. LOPEZ: We're in the Valley of Coachella.

17 COMMISSIONER BRADSTREET: Okay. Yeah. Maybe later  
18 this year. We'd love to come. Thank you very much.

19 MS. LOPEZ: We'll wait for you.

20 COMMISSIONER BRADSTREET: No applause, please.

21 MR. TYNER: Good morning, Commissioner. My name is  
22 Mike Tyner from Schneider National.

23 COMMISSIONER BRADSTREET: Good morning.

24 MR. TYNER: And I'm representing our 600 drives in  
25 the state of California, along with our thousands of

1 drivers nationwide. My comments are going to be very  
2 similar, along the lines of the gentleman that just spoke  
3 from the transportation industry.

4 COMMISSIONER BRADSTREET: Sorry. Could we have a  
5 little hush, please? If you're going to talk, again,  
6 would you mind stepping outside?

7 I'm sorry, sir. Go ahead.

8 MR. TYNER: For the transportation industry, we're  
9 currently regulated by the hours of service federal  
10 reg --

11 COMMISSIONER BRADSTREET: I'm sorry. Are you a  
12 trucking --

13 MR. TYNER: I'm with Schneider National.

14 COMMISSIONER BRADSTREET: Right. Is that trucking?

15 MR. TYNER: Yes, it is.

16 COMMISSIONER BRADSTREET: Okay.

17 MR. TYNER: And we have 600 drivers in the state.

18 COMMISSIONER BRADSTREET: Thank you.

19 MR. TYNER: The current -- the trucking industry is  
20 currently regulated federally by the hours of service  
21 regulations. And it's our belief that the addition of  
22 the mandatory break time is unnecessary and doesn't make  
23 sense for our industry.

24 And there's a couple of reasons for that, first off  
25 being safety. The gentleman before had mentioned that.

1 Our drivers operate in a very, very congested and  
2 difficult arena. It's unfair and impractical to ask them  
3 to take their break immediately at a five- and a ten-hour  
4 period. It's almost impossible for them to pull over on  
5 the side of the road. And doing so will lead to a very  
6 unsafe situation which could cause accidents.

7 The second issue is really regarding the workday for  
8 our workers. Adding the additional hour is going to make  
9 a long day even longer. Our drivers typically work 11 to  
10 12 hours a day. If you add that mandatory hour, plus the  
11 time it would take to pull off the highway, find a break  
12 place, and then get back on the highway, it's going to  
13 extend -- it's going to extend their day substantially.  
14 Our concern here is fatigue. It's going to extend the  
15 time between when they can take their next rest period,  
16 increase the fatigue factor, which could cause accidents.  
17 So we're concerned about that.

18 The third piece really deals with our customer. Our  
19 customers are very demanding. They expect us to be there  
20 when they need us. So when their dock gets cleared, they  
21 call us. They expect us to back that truck right up to  
22 the dock to make sure -- back the trailer up to make sure  
23 we're ready to unload or load that freight. It's just  
24 unacceptable for us to tell them that our driver's there;  
25 however, he's over on the other side of the yard taking

1 his 30-minute break and he'll be with you in a minute.  
2 So that won't work for our customer base.

3 And the last piece is really about enforcement. We  
4 struggle with the enforcement of this. A California  
5 driver, once he leaves the state lines and goes to  
6 another state, what happens to him there? If we hire a  
7 new Pennsylvania driver, once they cross the California  
8 state line, are they eligible for these rules? What do  
9 we need to train them on? So those are the issues we  
10 have.

11 That being said, this law may make sense for some  
12 employers and employees, but it just doesn't make sense  
13 in the trucking industry.

14 COMMISSIONER BRADSTREET: Thank you very much.

15 MR. TYNER: Thank you.

16 MR. POLASKI: Commissioner.

17 COMMISSIONER BRADSTREET: Good morning.

18 MR. POLASKI: Thank you again. Art Polaski from the  
19 California Labor Federation. I must say that, among our  
20 two million members in California, we hear less so about  
21 a problem with people getting their employers in trouble  
22 because they don't take a work break, and more because  
23 employees are denied by their employers from the ability  
24 to take a work break to be safe.

25 I'd like to take a couple of minutes out to respond

1 to some of the issues raised in the previous hearing.  
2 The first one is the argument that you heard in the  
3 previous hearing that you held about the claim that the  
4 law is confusing. Current law is actually quite simple:  
5 Provide your employees with a 30-minute lunch break. The  
6 law is easy to follow. It's easy to document for  
7 compliance purposes.

8 For the law to be watered down with watering down  
9 the meaning of the word provide, it could lead to more  
10 complicated record keeping. It could lead to more  
11 uncertainty. And it could result in more litigation.  
12 Current law may not be perfect for employers or  
13 employees, but it does provide a clear rule that both  
14 parties can understand and follow.

15 In the last hearing you also heard that recent  
16 changes to the law, as a result of them employers face  
17 class action lawsuits for, quote, "minor" violations.  
18 For example, one witness said, "Companies are paying  
19 millions because one employee came back from lunch a few  
20 minutes early." The basic right to a lunch break hasn't  
21 changed. The only change has been that the law is now  
22 enforceable.

23 In 2005 Wal-Mart was handed a jury verdict of \$172  
24 million for failing to give their workers meal breaks and  
25 rest periods on a wide broad basis. Their own attorney

1 responded by saying there had been some compliance  
2 problems by Wal-Mart a number of years ago, but there's  
3 100 percent compliance now.

4 Why did Wal-Mart systematically deny breaks, and  
5 suddenly now become 100 percent in compliance, if they  
6 are? It's because workers gained an important  
7 enforcement tool. Employers then had to follow the law.  
8 If enforcement is weakened, routine violations of breaks  
9 may again become the standard procedure.

10 These class actions are not filed because one  
11 employee returned from a meal break a few minutes early.  
12 These cases are actually about companies that have  
13 violated the rights of their workers systematically. And  
14 we need to continue to assure that those workers are  
15 assured, guaranteed and protected for their safety and  
16 their meal breaks. And we urge continued protection of  
17 that law. Thank you very much.

18 COMMISSIONER BRADSTREET: Thank you. No applause,  
19 please. Thank you very much, Mr. Polaski. Let's call  
20 the next five. And please try to refrain from applause.  
21 It's just not appropriate. Thank you.

22 UNIDENTIFIED FEMALE: The next five speakers will be  
23 Phoebe Seaton, Ron McCuskey, Greg Cook, Rock Zeerman, and  
24 Julie Sauls.

25 MR. ZEERMAN: Good morning.

1 COMMISSIONER BRADSTREET: Good morning.

2 MR. ZEERMAN: Rock Zeerman, California Dependent  
3 Petroleum Association. I represent 450 independent oil  
4 and gas producers, as well as service and supply  
5 companies.

6 First of all, a little bit about what this issue is  
7 not for our membership. This is not an issue -- this is  
8 not a financial issue, and this is not an issue of  
9 providing meals and rest period. Our members are eager  
10 and willing to comply with the law. What's killing us is  
11 ambiguity as far as what the law exactly states given the  
12 unique nature of the business that we're engaged in.

13 Particularly that's the fact for our drilling  
14 companies. There's an issue of worker safety, and there  
15 are logistical issues that they have to contend with. As  
16 far as worker safety, we're dealing with potentially  
17 dangerous operations in the fact that you're opening up a  
18 hole in the ground that can have a reservoir that's under  
19 pressure. You're dealing with things such as steam. And  
20 it's very difficult for workers to simply walk away.  
21 These typically have three- or four-men crews that are  
22 working on these sites. And so they need to be monitored  
23 at all times in order to protect worker safety.

24 It's also an issue of logistics. Typically, these  
25 crews are working 12-hour shifts. And that reason is

1 it's one of the -- they're in very remote areas, and it's  
2 very difficult to move to 8-hour shifts where you'd have  
3 to have 3 crews. One, the availability of employees is  
4 simply not there.

5 Two, employees aren't interested in driving a half  
6 an hour to and from work in remote areas unless they're  
7 getting paid overtime, which obviously in the 12-hour  
8 system they are. And so that's what attracts them to  
9 those 12-hour -- that's why they want to work 12 hours,  
10 and that's why that's a logistical issue that we have to  
11 deal with.

12 And so for those two issues, the current law is  
13 particular troublesome for us because it doesn't let the  
14 flexibility for our workers to protect their safety by  
15 having meal periods that are on duty and paid. And  
16 that's what we'd be looking for in any clarification of  
17 current law. Thank you.

18 COMMISSIONER BRADSTREET: Thank you very much.

19 MR. McCUSKEY: Good morning.

20 COMMISSIONER BRADSTREET: Good morning.

21 MR. McCUSKEY: My name is Ron McCuskey. I represent  
22 Long's Drugstore. I'm both a pharmacist and a Pharmacy  
23 Manager. And we've -- I've experienced some frustration  
24 in both dealing with the five-hour lunch period ruling,  
25 and also trying to enforce it as an employer.



1           What we're asking for is a little bit of flexibility  
2 in the rulings. In the pharmacy industry there's natural  
3 lulls and an ebb and flow in the goings on of a pharmacy.  
4 A lot of times we're engaged in consultation and patient  
5 care. It's very difficult to stop at that moment and  
6 take a lunch period. Sometimes we just have to do it.

7           There are times when, you know, if we could just  
8 have a little bit of flexibility, things would work out  
9 both for the patient and for the employee. So we're not  
10 asking for, you know, not taking breaks, but just a  
11 little bit of flexibility in the timing that we could do  
12 that. Thank you.

13           COMMISSIONER BRADSTREET: Thank you.

14           MS. SEATON: My name is Phoebe Seaton. I am an  
15 Attorney with California World Legal Assistance in the  
16 Delano office. We represent farm workers and other rural  
17 poor workers. We are here again to state that we think  
18 the law is quite clear as it is. There's very little  
19 ambiguity in the law and/or liability.

20           We're actually here to ask for increased enforcement  
21 of the existing laws. Many folks have talked today about  
22 how their workers have plenty of opportunity for breaks,  
23 and that is not what we are seeing in the field. In  
24 fact, we are seeing systematic violations of meal and  
25 rest period laws due in part to the volume of work that

1 is required of our workers, quota requirements that are  
2 required of our workers, and outright denial.

3 Just in the past four weeks our office alone, which  
4 is one of twenty-two offices, has settled three cases.  
5 One hotel worker who was denied lunch breaks because she  
6 had to clean thirty-eight rooms in a seven-hour period.  
7 Dairy workers who have to milk in excess of a thousand  
8 cows in twelve-hour periods. And grape pickers who have  
9 compensation schedules that discourage the taking of  
10 breaks.

11 So, again, we are here -- we think that the cases  
12 that we see are just the tip of the iceberg. And we feel  
13 that it's DLSE's responsibility through the Labor  
14 Commissioners, DLSE, BOFI and AAAC to really enforce  
15 these regulations to make sure that our workers are  
16 getting their breaks. Thank you.

17 COMMISSIONER BRADSTREET: Thank you very much.

18 MR. COOK: Commissioner Bradstreet, Ms. Watkins, Mr.  
19 Alvarez, good morning. And thank you for the opportunity  
20 to meet with you today.

21 My name is Greg Cook. I represent the Greater  
22 California Livery Association. We are an association of  
23 over 4,000 limousine companies operating in the state of  
24 California.

25 Strict interpretation of sections 11 and 12 of wage

1 order 9, the meal and rest break periods, causes our  
2 industry great concern because oftentimes enforcing that  
3 is outside the hands of the employer.

4 Now, as you know, wage order nine exempts state  
5 government employees and political subdivision employees  
6 of political subdivisions of the state; specifically,  
7 public transit drivers. Oftentimes the concerns that  
8 those entities would have regarding public transit are  
9 the same concerns that we have.

10 The nature of our business is that all of our  
11 customers prearrange travel with the limousine company.  
12 And the driver and the vehicle are in direct command of  
13 that customer. They may ask us to serve them for eight  
14 hours. And that service may require that we provide  
15 constant travel for that eight-hour period. It may  
16 require that we take them from multiple -- to multiple  
17 locations. I'm going to stop here, wait ten minutes for  
18 me, I'll be right back. And so we -- there is no way  
19 that we can program the required break and lunch periods.

20 National security and general security of the  
21 company now requires that limousines be housed in  
22 specific secure areas. Events such as the Oscars, for  
23 example, where there are high-profile celebrities, events  
24 such as government events, where the local police will  
25 rope off an area for transportation of the government

1 employees, we are required by security personnel to keep  
2 our driver in the vehicle in that secure location.

3 Now, the driver is on duty during that time. That  
4 doesn't mean the driver can't have a lunch break or can't  
5 take something with him. But strict interpretation of  
6 wage order nine would indicate that perhaps we are not  
7 allowing our drivers to take the necessary breaks. We  
8 need the flexibility to allow our drivers to --

9 COMMISSIONER BRADSTREET: Sorry. You're going to  
10 need to wrap up.

11 MR. COOK: I'm sorry. Well, I am. We need the  
12 flexibility that we can be provided. We are going to  
13 take advantage of your invitation to respond in writing.  
14 I thank you very much for this hearing. And respond to  
15 any questions you may have.

16 COMMISSIONER BRADSTREET: Thanks.

17 MR. COOK: Thank you.

18 COMMISSIONER BRADSTREET: Thank you for being here.

19 MS. SAULS: Good morning, Commissioner and panel.

20 COMMISSIONER BRADSTREET: Good morning.

21 MS. SAULS: My name's Julie Sauls, and I am with the  
22 California Trucking Association. I started there in  
23 January. And one of the first issues I heard about and  
24 was asked to look into was the meal and rest break  
25 period. Because in our industry this is such an

1 important issue.

2       There are conditions that are beyond our control.  
3 And as I'm sure you can agree with us, the nature of our  
4 work doesn't always allow us to just stop immediately.  
5 Our office is a truck. It's a big truck going down the  
6 road. And to say once we hit a certain time period we  
7 must pull off immediately, the road conditions don't  
8 always allow for that. Traffic is one of the  
9 considerations. There is weather as an issue. And then  
10 there's also the safety of the driver, the safety of the  
11 load that they are carrying, and the safety of the  
12 community where they would then be forced to pull off.

13       Imagine a large truck that's full of fuel. They  
14 have to take certain conditions into factors -- into play  
15 when they pull off. They can't just pull off anywhere.  
16 And they can't leave that truck at a certain time.

17       You did ask for us to not only come here and speak,  
18 and hopefully you'll hear today from many of the drivers  
19 and many folks from the trucking industry, but we also  
20 just within the last week have collected some written  
21 testimony, which I'd be happy to give you either in the  
22 front or back, that we can leave with you. And we will  
23 continue to do so throughout the period.

24       Thank you so much for having this hearing. And one  
25 thing that we just would like to say is we do really need

1 flexibility as it goes for the trucking industry. Thank  
2 you.

3 COMMISSIONER BRADSTREET: Thank you very much.

4 UNIDENTIFIED FEMALE: The next five speakers will be  
5 Sharon Overton, Chris Rooney, Helen Wasserman, Ana  
6 Loranzo, and Joe Escobido.

7 COMMISSIONER BRADSTREET: Good morning. Go ahead.

8 MS. OVERTON: Hi. I'm Sharon Overton. Can you hear  
9 me?

10 COMMISSIONER BRADSTREET: Yes, ma'am.

11 MS. OVERTON: Okay. I'm Sharon Overton. And I'm  
12 representing -- I'm a District Manager, and I also am  
13 involved in HR for a retail organization. And I'm here  
14 for both the -- for both corporate to talk about how  
15 difficult it is to try to get everyone to take their  
16 meals at the -- with the five-hour rule. It's very hard  
17 to do that. And we have to go out and we have to give  
18 them infraction notices, and we have to write them up.  
19 And they're very unhappy about this.

20 And I'm here also because I'm a district manager and  
21 I'm talking about my people. And they're very angry. I  
22 go out there and say, "You've got to take your lunch  
23 right now or before the five-hour." But they said, "I'm  
24 not hungry. I have a customer."

25 And we have commission sales people. "I'm involved

1 with a customer sale right now. You mean I have to go  
2 give up this sale and take my lunch?" And I said, "Yes,  
3 because the State of California has now made a law taking  
4 away your freedom to eat when you're hungry or when it's  
5 convenient. Now you have to do it within these  
6 timeframes." And they're very angry.

7 And my stock people are angry because they're  
8 checking in a truck and they say, "Well, I'm not hungry.  
9 I want to finish checking in the truck." Oh, no. You  
10 got to go eat right now. Because it's a law, and you've  
11 taken away their freedom to eat at their convenience.

12 They can no longer pick up their children from  
13 school because, you know, I don't want to eat today. I  
14 want to go pick up my child from school. And this is  
15 when I have to do it. Oh, no, you can't do that anymore.  
16 Because the State of California has said you don't have  
17 that freedom.

18 And they're very angry. And, you know, we are -- we  
19 want to give everyone a chance to have their meal breaks,  
20 and we always have. We've given everyone a chance to  
21 have their breaks. But why are we penalizing these  
22 people? Why are we taking away their freedom to act in a  
23 way that is convenient and comfortable for them? Thank  
24 you.

25 COMMISSIONER BRADSTREET: What was the name of your

1 corporation or --

2 MS. OVERTON: Lamps Plus.

3 COMMISSIONER BRADSTREET: Excuse me?

4 MS. OVERTON: Lamps Plus.

5 COMMISSIONER BRADSTREET: Thank you very much.

6 MS. OVERTON: Thank you.

7 MS. WASSERMAN: Good morning. My name is Helene  
8 Wasserman and I'm an Employment Attorney. I've  
9 represented employers within California in employment  
10 matters for 20 years at this point.

11 I would like to echo the remarks that have been made  
12 regarding flexibility. Employers, my clients, who span  
13 all industries and all sizes want the flexibility to be  
14 able to honor a request by an employee to take their meal  
15 period at a different time, or to leave a little bit  
16 early and work through their lunch. We want that  
17 flexibility.

18 But I will also echo the remarks made earlier from  
19 the gentleman with the employers' group. I do have  
20 clients -- and responding to the question you posed to  
21 him. I do have clients who call me in the untenable  
22 position of they don't want to have to penalize their  
23 employees, or discipline or counsel them because they  
24 won't take their meal period on time. But they feel that  
25 they have to in order to implore upon these individuals



1 the necessity to take it. Otherwise, they'll -- the  
2 employer will end up being in a penalty position. It's  
3 an untenable position that employers find themselves in.

4 I do want to two specific industries that I  
5 represent that are gravely affected by the regulations as  
6 they currently exist. One is the security guard  
7 industry. Now, I recognize that there are provisions  
8 that specifically state both in the regulations as well  
9 as in the case handling manual that individuals in  
10 industries who cannot be relieved of all duty, for  
11 example, can agree to waive their meal period. However,  
12 there's no guidance as to what exactly that is.

13 Security guards are hired to maintain the security  
14 of facilities. That's what they're in the business of.  
15 So, at a minimum, there should be some flexibility for  
16 people in the industry that cannot leave. If you are a  
17 security guard for a bank and you leave for 30 minutes,  
18 then that's the time that the bank robber's going to come  
19 and rob the bank. That's what you're hired to be there  
20 for.

21 The other industry that I would like to address is  
22 the hospitality industry. In the hospitality industry,  
23 this is a gravely important issue. You're dealing with  
24 individuals who make most of their money, frankly, on  
25 gratuities. They're not going to want to leave their

1 tables for 30 minutes and let somebody else take up and  
2 provide different service for the individual, and then  
3 not get their gratuity.

4 We need flexibility in these laws for all employers.  
5 And I specifically, as I said, wanted to raise those two  
6 industries where flexibility and more guidance is vital.  
7 Thank you very much.

8 COMMISSIONER BRADSTREET: Thank you.

9 MS. LOZANO: Good morning. My name is Ana Lozano.  
10 (Inaudible) two years when I was working. And I was  
11 studying at the same time. For those two years there  
12 were too much discrimination where I was working. On  
13 occasions ladies who were pregnant could not work or  
14 could not take their lunch breaks. I could not -- and  
15 many times I could not study. I could not rest because I  
16 didn't -- I was not given the opportunity. The only  
17 thing that my boss wanted was to have orders ready and to  
18 have the place clean.

19 Many of my coworkers are afraid to come over to talk  
20 because they're afraid to be fired. That's why I'm here,  
21 because I think I have a responsibility for us to have  
22 all rights. Thank you.

23 COMMISSIONER BRADSTREET: Thank you very much. I  
24 was very concerned about what you had to say. Excuse me.  
25 I was concerned. And I would like you to go talk to our

1 enforcement people. Okay? Who will stand up. Our  
2 enforcement people. Let's make sure that you go talk to  
3 them. Okay?

4 MS. LOZANO: Yes, I will.

5 COMMISSIONER BRADSTREET: Good. Thank you very much  
6 for being here.

7 MR. ESCOBEDO: Commissioner Bradstreet and those in  
8 attendance, good morning.

9 COMMISSIONER BRADSTREET: Good morning.

10 MR. ESCOBEDO: My name is Joe Escobedo, and I am  
11 here representing Veolia Transportation Services, Inc.  
12 I'm here this morning to address concerns we share with  
13 our bus operators, mechanics and other workers in regards  
14 to the provisions of wage order nine. The current  
15 regulation requires workers to take a 30-minute meal  
16 break for each work period of 5 hours.

17 Unfortunately, for employers and employees, how to  
18 implement this rule is very unclear. Must the meal  
19 period start or conclude within the five-hour period? If  
20 a worker is even five minutes late taking a meal break,  
21 employers can be penalized and workers may be  
22 disciplined.

23 The current rule denies workers the option of  
24 foregoing that meal break time and leaving work early to  
25 take care of important family matters.

1           In the case of bus operators, the current rule  
2 denies them the choice of more traditional work  
3 schedules, which have all but disappeared due to the  
4 provisions of wage order nine.

5           Bus operators in the public transit sector currently  
6 enjoy a meal period flexibility through collective  
7 bargaining agreements with public transit agencies. Why  
8 do you exclude the private sector bus operator who is  
9 serving the same tax paying customer base as the public  
10 transit bus operator?

11           The provisions of wage order nine are very  
12 cumbersome and have increased the cost of doing business  
13 due to penalties and increased workforce in order to be  
14 compliant with the program. We only seek what you have  
15 already provided to the public agency.

16                   (Cassette 1, side A ended. Continuing  
17 with cassette 1, side B.)

18           UNIDENTIFIED FEMALE: Okay. The next set of five is  
19 Kevin Kish, Cheryl Williams, Matthew Dentay, Tom  
20 Luwonski, and Tammy Smith.

21           MS. WILLIAMS: Good morning, Commissioner.

22           COMMISSIONER BRADSTREET: Good morning.

23           MS. WILLIAMS: My name is Cheryl Lobassi-Williams.  
24 I'm a member of United Nurses Association of California,  
25 Union of Healthcare Professionals, and AFSCME

1 International.

2 I'm a Registered Nurse who works 12 hours. I work  
3 labor and delivery. Meal and break periods are very  
4 important to the safety of my clients and my patients. I  
5 take it very seriously that the rules that were put in  
6 place be enforced.

7 It's hard not to have a break period. We are under  
8 stress. We move fast. We not only have the patient, but  
9 we have an unseen baby to take care of. And in our  
10 business, we need to have our breaks and our meal  
11 periods.

12 If we don't do it, we are counseled the first time.  
13 And if you're not on it, you get written up. You get so  
14 many write-ups, you don't have a job at that particular  
15 hospital.

16 So I ask the Commission to please enforce and stick  
17 to what has already been put in the law. Thank you.

18 COMMISSIONER BRADSTREET: How many write-ups -- you  
19 say that you get written up if people --

20 MS. WILLIAMS: You get called into the office first  
21 time. The second time you get a detention or you get a  
22 written. And then on the third one you get suspended.  
23 And then the next time you're out of work.

24 COMMISSIONER BRADSTREET: Thank you very much.  
25 Thanks for being here.

1 MR. KISH: Good morning. My name is Kevin Kish.

2 COMMISSIONER BRADSTREET: Good morning.

3 MR. KISH: Good morning. I'm an Attorney with the  
4 Employment Rights Project of Bet Tzedek Legal Services.  
5 We represent -- we provide free legal representation to  
6 the working poor in Los Angeles County.

7 And I want to say, first of all, that we recognize  
8 that the meal and rest break requirements, like any  
9 governmental regulation, impose burdens. And those  
10 burdens fall on employers. We've heard from them. And  
11 they fall on nonexempt employees who would prefer not to  
12 take breaks. That's a fact.

13 The Legislature and the Industrial Welfare  
14 commission have tried to strike a balance between the  
15 burdens and the benefits. And I think theoretically it's  
16 a good idea to talk, have this discussion about whether  
17 that balance has been properly struck. In practice it's  
18 hard for me to do so because none of the people that I  
19 see get those benefits.

20 As of this morning we have 92 employments cases open  
21 in our office. We don't take any that are just rest and  
22 meal break violations because we have so many minimum  
23 wage violations cases. Of those 92 cases, only 6 are  
24 cases in which there were no violations of the meal and  
25 rest break provisions of California law. The industries

1 are construction, car wash, garment, restaurant, cleaning  
2 or janitorial, auto repair, security, manufacturing and  
3 domestic work.

4       And when I'm talking about violations, I'm not  
5 talking about people occasionally working through breaks.  
6 I'm not talking about 25-minute lunch periods rather than  
7 30 minutes. I'm talking about men and women who perform  
8 physical labor and who are physically prevented from  
9 taking breaks, including bathroom breaks, over the course  
10 of 10- and 12-hour days.

11       The employers in these cases are not like the  
12 employers that we've heard from today, who presumably are  
13 law abiding and who I have no quarrel with. These  
14 employers that we're working with don't have human  
15 resources departments. They don't have employment  
16 attorneys advising them.

17       The liability I frankly don't think is that hard to  
18 understand. There is quite a bit of flexibility. People  
19 can request to leave work early and come back and make up  
20 that time later in the week without overtime liability  
21 imposed. You have to take that rest break somewhere in  
22 the four hours.

23       I don't think *White v. Starbucks* confuses things  
24 that much. That case involves a manager who failed to  
25 take meal breaks when he himself was the only person who

1 could have granted himself the meal breaks. I really  
2 don't have a problem with that decision, frankly. And I  
3 don't think that it impacts any of the cases that I see.  
4 Because my people are not the people in charge. They  
5 rely on the meal and rest break laws, though they are  
6 often unenforced, to work towards minimum, and we're  
7 talking minimum, labor standards in the low wage  
8 economies of this state.

9       Again, I think we see a divide. I think we're  
10 seeing a class divide, and I think we're seeing an  
11 industry divide. But the balance has been strike. And I  
12 think that we need to enforce the laws at a minimum level  
13 just to get those benefits before we can have a  
14 discussion about changing the balance between the  
15 benefits and the burdens. Thank you.

16       COMMISSIONER BRADSTREET: Thank you very much.

17       MR. DENTE: Good morning Madam Commissioner. My  
18 name is Matt Dente. I'm an Attorney with the law firm of  
19 Sheppard, Mullin, Richter and Hampton. I'm here on  
20 behalf of a number of our clients. We represent  
21 California employers across the state in the retail,  
22 restaurant and manufacturing industries. And they've  
23 asked me to come here and talk a little bit about what  
24 you've been hearing about, the lack of flexibility.

25       Just to give a few examples, we represent a retail



1 client who pays their employees on a commission basis.

2 And these employees, when they're --

3 COMMISSIONER BRADSTREET: Could you speak into the  
4 mic?

5 MR. DENTE: I'm sorry. It's a little low for me.

6 COMMISSIONER BRADSTREET: I know. I'm sorry.

7 MR. DENTE: When the employees are told that they  
8 must take their meal periods and counseled when they  
9 don't do that, they express much frustration for the  
10 reasons you heard earlier with the woman talking about  
11 her retail situation. They don't want to walk away from  
12 a sale.

13 If they have a personal customer who they're  
14 familiar with come in, the last thing they want to do is  
15 hand that personal customer who they know about their  
16 wardrobe, their likes and dislikes, off to another sales  
17 associate who will take their commission and potentially  
18 build a relationship with their customer.

19 This isn't -- this frustration isn't limited just to  
20 our retail clients. If you look to our restaurant  
21 clients, they have the same complaints from their waiters  
22 and waitresses. The last thing that a waiter and  
23 waitress want to do after servicing a table for an hour  
24 is to walk away from that table right before dessert is  
25 laid on the table, share their tips, and explain to the

1 patron in the middle of their meal why they're being  
2 serviced by someone else.

3 And then the final example is the trucking industry,  
4 which you've already heard plenty from. But we have  
5 clients who manufacture food products. They hire  
6 delivery drivers to drive trucks to the stores like Vons  
7 and Ralphs and Albertsons. And these truck drivers are  
8 forced to sit in line in their truck waiting for these  
9 docks to be free so that people can deliver their  
10 products. And they have plenty of down time. And  
11 oftentimes they have that sandwich on their seat next to  
12 them looking at them and they eat it. And the last thing  
13 they want to do is extend their workday by 30 minutes in  
14 order to take a meal period when they've already eaten  
15 their meal, had 45 minutes sitting in the cab of their  
16 truck, listened to the radio, read the paper, and would  
17 rather get home. Thank you.

18 COMMISSIONER BRADSTREET: Thank you.

19 MS. SMITH: Hi. My name is Tammy Smith and I work  
20 for Transportation Company in Victorville. And I do  
21 believe that the lunches should be flexible. The  
22 positions that we work in, it's not beneficial to the  
23 passengers or some of the drivers to have to change  
24 dispatchers in the middle of a shift so that the  
25 dispatcher can take lunch. It causes the drivers to run

1 late. It causes confusion. And it causes stress that's  
2 not necessary.

3 Lunches should be negotiated. If someone doesn't  
4 want to take their lunch, wants to work through it, go  
5 home early, they should be allowed to do that so that  
6 they can benefit the company, benefit the passengers,  
7 benefit the other employees. Thank you.

8 COMMISSIONER BRADSTREET: Thank you.

9 MR. LEWENDOWSKI: Hello, Commissioner. My name is  
10 Thomas Lewendowski. And I'm a Nurse of the Irvine  
11 Association of Nurses. And I'm one of the elected  
12 offices in that hospital. I work in a critical care  
13 setting and --

14 COMMISSIONER BRADSTREET: I'm sorry. Which hospital  
15 are you, sir?

16 MR. LEWENDOWSKI: I'm at Irvine Regional Hospital.

17 COMMISSIONER BRADSTREET: Thank you.

18 MR. LEWENDOWSKI: And the situation is that, in my  
19 understanding, being relatively new to the state in four  
20 years, that time is my time. And we have a situation now  
21 that allows folks to cover my patients safely no matter  
22 what the situation is. And to cut away the corners of  
23 any existing laws that we have now is going to be  
24 exploited.

25 I think this is an education issue to teach

1 employees and teach employers how to give someone a  
2 proper break. I think committed workers need the most  
3 education and they should not be penalized. But we are  
4 just starting to really reeducate this state in how to  
5 properly allow people to take a nutritious break for  
6 themselves. And without doing that is a disservice to  
7 the public. Thank you.

8 COMMISSIONER BRADSTREET: Thank you very much.

9 UNIDENTIFIED FEMALE: The next five speakers will be  
10 Kevin Bushay, Joy Harvey, Chu Lee, Jody Carren, and Ted  
11 Galloway.

12 MR. BUSHAY: I guess I'll go. Good morning,  
13 Commissioner. Thank you for taking the time to hear our  
14 concerns. We greatly appreciate it. It's a very nice  
15 and open --

16 COMMISSIONER BRADSTREET: Good morning.

17 MR. BUSHAY: -- and especially in California. Good  
18 morning. My name is Kevin Bushay. I'm with Longs  
19 Drugstores. I am in a unique position the fact that I'm  
20 a nonexempt Manager, so I can kind of represent both  
21 sides, in a sense.

22 This law impacts us in a variety of ways. I'll  
23 speak personally quickly. For example, I have to start  
24 getting ready for my break a half an hour before it has  
25 to start. I have to remove anything that identifies me

1 as an employee, because as I make my way to the time  
2 clock, customers pounce on me. Vendors come. People see  
3 employees come.

4 So I've stood at the clock waiting to swipe my card  
5 so I do not get a lunch penalty, or my employer doesn't  
6 get a lunch penalty, and I can't serve customers or  
7 employees because of that situation.

8 But more importantly, on a wider scale, my payroll  
9 is based on dollars, not hours. So in order to cover my  
10 personal break, I have to schedule management personnel,  
11 or additional key carriers, as we call them, to cover my  
12 break for an eight-hour shift, when I need them to cover  
13 half an hour. That ties up payroll dollars.

14 But more importantly, the people who suffer are my  
15 lower wage employees. Because those hours that could be  
16 going to them are now tied up in management dollars that  
17 could be better expended elsewhere. So the majority of  
18 the employees who are making the lower wage scales are  
19 suffering because of that fact, just because I have to  
20 schedule an eight-hour person to cover my half hour.  
21 Which I would gladly waive.

22 I don't think anyone here disagrees with the intent  
23 of the law. I think that's pretty much global. We all  
24 understand where it comes from. And it's there to  
25 protect the minority of companies -- or workers that

1 suffer at the minority of companies who do not obey the  
2 law and do not agree with the intent of it.

3       However, I believe the majority of companies are  
4 more than willing to give people breaks. No one's saying  
5 deny breaks. We just want some flexibility in how it's  
6 executed.

7       With the diversity of our economy in California, as  
8 we've heard here all the different industries, I really  
9 truly believe that some flexibility is needed to  
10 accommodate the diversity of our economy and the  
11 employers. Thank you.

12       COMMISSIONER BRADSTREET: So let me -- can I just --  
13 you mentioned you've got this system where you swipe --  
14 you swipe in and out --

15       MR. BUSHAY: Yes, a time clock.

16       COMMISSIONER BRADSTREET: -- on your breaks?

17       MR. BUSHAY: Correct.

18       COMMISSIONER BRADSTREET: Okay. So what happens,  
19 then, if say you swipe in -- you swipe out, and then  
20 after 20 minutes you come back? This is your lunch  
21 break. You haven't taken the full 30 minutes. Then what  
22 happens?

23       MR. BUSHAY: It shows up on our corporate records as  
24 a lunch penalty, and which our store is penalized and the  
25 employee is paid. And we as management get penalized.

1 Not financially, but in our records as managers. So our  
2 company keeps strict details on that. Our time clock  
3 won't even allow them to punch back in early. They have  
4 to call a supervisor before they can punch in early.

5 COMMISSIONER BRADSTREET: Okay.

6 MR. BUSHAY: So --

7 COMMISSIONER BRADSTREET: Thank you.

8 MR. BUSHAY: You're welcome.

9 MS. HARVEY: Good morning.

10 COMMISSIONER BRADSTREET: Good morning.

11 MS. HARVEY: Imagine for a minute --

12 COMMISSIONER BRADSTREET: Sorry. Your name, please,  
13 ma'am?

14 MS. HARVEY: Oh. My name is Joy Harvey.

15 COMMISSIONER BRADSTREET: And who are you with?

16 MS. HARVEY: I am a Registered Nurse. I am with  
17 United Nurses Associations of California, Union of  
18 Healthcare Professionals.

19 COMMISSIONER BRADSTREET: Thanks. Thank you.

20 MS. HARVEY: Uh-hmm. So imagine for a moment, if  
21 you will, working a 12-hour shift, or more, with little  
22 more than a few sips of coffee, nothing to eat, not even  
23 a bathroom break. I am a Registered Nurse. For more  
24 than 25 years I have worked under such conditions.

25 I am now a union representative for healthcare

1 professionals -- UNAC, UACP, AFSCME -- and we represent  
2 more than 15,000 MEMBERS. This very day we have nurses  
3 missing meals, working through breaks, in part due to  
4 dedication to their patients. But in part due to poor  
5 starrng, and in part due to intimidation and coercion by  
6 their supervisors to avoid overtime.

7 Now again imagine an exhausted nurse at the end of  
8 such a shift with low blood sugar caring for your  
9 critically ill child or your wife or your mother. Meal  
10 breaks support the health of our workers, the safety of  
11 our patients, and reduce the liability to our employers.

12 Many healthcare professionals working 12-hour shifts  
13 already waived their right to one of their 30-minute meal  
14 periods. Don't allow employers to deny them their last  
15 chance for a break.

16 As healthcare professionals, we are asking you, who  
17 have not only the means but the responsibility, to  
18 support safe patient care and a healthy work environment  
19 for not only those who care for our families, but for all  
20 workers in California. Thank you.

21 COMMISSIONER BRADSTREET: Thank you very much.  
22 Thank you.

23 MS. CARRÉN: Good morning. My name is Jody Carren.  
24 I'm a Human Resources Manager for Toyota Motor Sales USA.  
25 And I'm here on behalf of the company and our employees.



1 And we'd like to thank you for the opportunity to speak  
2 on this important workplace issue.

3 As many other speakers ahead of me have spoken to,  
4 our issue is flexibility. Right now we have very  
5 flexibility with our meal and break periods in terms of  
6 mandating to our associates when they have to take it.

7 As a human resources manager I get complaints  
8 from -- well, I have received complaints continuously on  
9 this issue because we provide a very flexible work  
10 environment for our associates. We give them flexibility  
11 in terms of when they can report to work, and flexibility  
12 in terms of 9/80 schedules and other modified schedules.

13 The one thing with regard to meal periods, there is  
14 no flexibility. And that's what we would ask for. Our  
15 associates face commute issues, child care issues, elder  
16 care issues, personal or medical issues that many would  
17 prefer to have that early opportunity to leave work to  
18 attend to those issues in their personal life. And  
19 that's part of our culture and what we would like to  
20 appeal to the Commission to reconsider and add  
21 flexibility back into this.

22 We are hearing from other employers who apparently  
23 have issues where they don't provide this. That's not  
24 Toyota's case. We're committed to providing these  
25 periods of time for our people to take breaks. We ask

1 that the State address those issues as opposed to the  
2 employers who are committed to providing that time off  
3 and that flexibility for our associates.

4 I would also add to the other statements with the  
5 trucking industries. We have transportation drivers that  
6 face the same difficult issues that other trucking  
7 associates do, and they've asked that I speak on their  
8 behalf here today.

9 In short, in two words, our employees hate this  
10 regulation. Thank you.

11 COMMISSIONER BRADSTREET: Thank you.

12 MS. LEE: Good morning. My name is Yanda Lee. I am  
13 a summer Law Clerk with Neighborhood Legal Services of  
14 Los Angeles County. I will be acting as a translator for  
15 Mr. Lee.

16 My name is Chu Lee. I live in Rosemead, California.  
17 I am a garment worker. I have worked in a factory in  
18 Rosemead for four years. From my personal experience, I  
19 know how important it is for workers to take their 30-  
20 minute meal breaks and 10-minute rest breaks.

21 Unless an employer clearly tells the workers that we  
22 can take the 30-minute meal break, we cannot stop working  
23 because we always have work to do. Being able to take a  
24 meal break is incredibly important protection. It should  
25 not be changed or watered down.

1           When I was working as a garment worker, I worked six  
2 days a week, eight hours a day. I was never given any  
3 rest breaks. The factory was always very busy. I always  
4 had work to do. I never took rest breaks.

5           It is very important that the employer is required  
6 to inform the workers that they are entitled to 30-minute  
7 meal breaks. Even if I knew at the time that I had a  
8 right to take the meal breaks, I would have been afraid  
9 to exert this right because I was afraid of being fired.

10          We work in close proximity to equipments that  
11 involve heat. If we don't get enough rest in the rest  
12 breaks or meal breaks, we are prone to mistakes. This  
13 can lead to severe injuries.

14          Workers do not have the same advantages as the  
15 employers. Employers are in a better position to inform  
16 the workers about their entitled rights. We do not know  
17 what the law is, so the employer should be the ones to  
18 tell us. The law was designed to protect us, the ones  
19 who are at the greatest risk of being exploited. Please  
20 do not throw away our rights.

21          COMMISSIONER BRADSTREET: Thank you very much.  
22 Thank you.

23          UNIDENTIFIED FEMALE: Ted Galloway. The next five  
24 speakers will be Bruce McCray, Jose Tello, Max Wagner,  
25 Tom Moxley, and Hy Yang.

1 MR. McCRAY: Madam Commissioner, thank you so much  
2 for allowing us to be here. My name is Bruce McCray.  
3 I'm the Director of Public Affairs for UPS. I also  
4 started at UPS in 1978 as a Teamster unloader. Worked my  
5 way to driver. I was shop steward with the Teamsters for  
6 three years.

7 I represented 36,216 employees in the state of  
8 California, 11,120 of those being drivers. Our drivers  
9 try very hard to meet the current five-hour deadline in  
10 their lunches, but sometimes it's impossible. Why? For  
11 the same reason you've heard here today. The road is not  
12 controlled and is not a controlled working environment.

13 The clock doesn't take into account the fact that  
14 California has the most congested highways in the  
15 country. It doesn't take into account accidents that  
16 delay a driver from getting to point A and point B. And  
17 all they do is wish to pull over in a safe area to take  
18 their lunches.

19 Allowing flexibility would not weaken the rights of  
20 workers to take their meal period. Indeed, the Teamsters  
21 Union, which represents our drivers, has embraced it.  
22 They too recognize the logistical and safety problems the  
23 current five-hour meal period creates for its members.  
24 They have bargained in our UPS Teamster contract for a  
25 six-hour break time, going to the sixth hour to take

1 their meal. But, unfortunately, the union agreement is  
2 meaningless because state law dictates otherwise that  
3 trumps the terms of our contract.

4 So at UPS we have invested significantly in a system  
5 that essentially straps a personal lunch policeman on  
6 every driver. It's called our dyad board. Our dyad  
7 board is something that you sign when you get a package  
8 from our drivers. If the driver doesn't take their lunch  
9 by the end of the fifth hour -- or excuse me, by the end  
10 of the fifth hour, yes, it goes off. It gives the driver  
11 a few minutes and says your dyad board will turn off.  
12 Cease and dismiss all work. So if the driver is in an  
13 area that is not safe, he continues on, that driver is  
14 now held accountable for going past their five-hour lunch  
15 period.

16 We have right now to this date over 7200 infractions  
17 have occurred for our drivers at UPS. That includes  
18 formal warning letters, suspensions, two-day suspensions,  
19 and terminations. Twenty-two of our drivers have been  
20 terminated this year because of the current laws that do  
21 not allow us to go by our union bargaining agreement  
22 giving us to the sixth hour.

23 We need help. We need help immediately. We've been  
24 working on this for years. This is something that no one  
25 here -- I mean I'm a firm believer. We don't want lunch

1 periods taken away. We just need the flexibility in  
2 today's laws. Thank you.

3 COMMISSIONER BRADSTREET: I'm sorry. Did you say --  
4 no, no, please, no applause. Sir, did you say you've  
5 cited -- you've --

6 MR. McCRAY: Seventy-two hundred of our employees  
7 have been cited, yes, ma'am.

8 COMMISSIONER BRADSTREET: And they --

9 MR. McCRAY: Twenty-two of those drivers have been  
10 terminated from our company. Good drivers. This year.  
11 From January through July.

12 COMMISSIONER BRADSTREET: And why have they been  
13 terminated?

14 MR. McCRAY: Because they did not take their lunch  
15 by the State prescribed time.

16 COMMISSIONER BRADSTREET: And you have -- you said  
17 you have an agreement with the Teamsters go up to --

18 MR. McCRAY: Yes, ma'am.

19 COMMISSIONER BRADSTREET: -- to go up to six hours?

20 MR. McCRAY: To go to the sixth hour, yes, ma'am.  
21 But the state law supersedes that. Does not allow us the  
22 flexibility in our law. All unions would love the  
23 flexibility in their contracts. That's why it's  
24 negotiated. It's negotiated between a company and the  
25 employees and the unions. But all truckers really need

1 this flexibility in the state of California. Thank you.

2 COMMISSIONER BRADSTREET: Thank you very much for  
3 being here.

4 MR. WAGNER: Good morning, Commissioner. My name is  
5 Max Wagner. I'm a Human Resources Manager for  
6 Los Angeles Freightliner. We're a dealership that sells  
7 trucks, parts, service, body shop work, et cetera.

8 When this law went into effect -- not the fact that  
9 they had to have meal and rest periods, that's always  
10 been there. We've always encouraged our employees to  
11 take them. When this law went into effect, we sent out a  
12 letter to all of our employees having them sign saying  
13 you know you must take a meal period of at least 30  
14 minutes. You must take it before the fifth hour. End of  
15 story.

16 After a few weeks we monitored it and found 25  
17 percent of our employees either weren't taking a meal  
18 period at all, or were taking less than 30 minutes.

19 COMMISSIONER BRADSTREET: I'm sorry. What percent?

20 MR. WAGNER: About 25 percent were not taking a meal  
21 period at all, or were not taking the 30 minutes. So we  
22 had their managers counsel them. They had to follow the  
23 law. Big brother says you have to do this.

24 Again, we continued to monitor it every couple of  
25 weeks with similar numbers. We started writing people

1 up. We suspended a couple of people. And pretty much  
2 we've got it under control now. But we still have  
3 gripings from our employees, and we still have  
4 violations.

5 Our employees have expressed to us that they would  
6 like to have -- be treated as adults, given the  
7 flexibility to do what they would like to do, what's good  
8 for them. They don't want to have to take 30 minutes if  
9 they get done eating in 15, and just have to sit there  
10 and wait for the clock to tick around to 30 minutes.

11 They want to be able to take off early some days. Can I  
12 take off early? No. Big brother says you got to take  
13 the meal period.

14 So I invite you to come out and see our employees.  
15 I didn't bring them here today. If it would have been  
16 reasonable, I'd have brought all 500 of our California  
17 employees to tell you the same thing. I ask you as a  
18 Legislator to come to our worksites, talk to our  
19 employees in their cubicles, at the warehouse, at the  
20 lunch room, and ask them what they think. They don't  
21 like the law. Thank you.

22 COMMISSIONER BRADSTREET: Sir, what was the name of  
23 your business, sir?

24 MR. WAGNER: Los Angeles Freightliner.

25 COMMISSIONER BRADSTREET: Okay. Thank you.



1 MR. TELLO: Good morning. My name is Jose Tello.  
2 I'm a Staff Attorney with Neighborhood Legal Services of  
3 Los Angeles County. Last name is spelled T-E-L-L-O.

4 We provide free legal assistance to low income  
5 individuals in Los Angeles County. And part of that work  
6 involves running two weekly workers' rights clinics. And  
7 at these clinics we assist approximately 50 low wage  
8 workers on a weekly basis from a wide range of  
9 industries, including the garment, janitorial,  
10 construction, restaurant and hotel industries.

11 A major part of our work involves assisting these  
12 workers in enforcing their rights under California's  
13 labor laws, including laws relating to an employer's  
14 obligation to provide rest and meal breaks.

15 I'd like to talk to you a little bit about the  
16 Starbucks decision. Now, the position of the Federal  
17 District Court in Starbucks that an employer should only  
18 be required to offer meal breaks, and that an employee  
19 has to show he was forced to work his meal breaks to  
20 prevail on a meal break claim not only ignores  
21 established precedent, but also overlooks the realities  
22 of the workplace, particularly in low wage industries.

23 The Starbucks decision, in essence, shifts the  
24 burden for providing breaks from the employer to the  
25 employee, even though it is the employer who has the

1 workplace authority to authorize and permit breaks. Most  
2 employees do not have the power or authority to arrange  
3 schedules or set reasonable production quotas in order to  
4 provide for meal breaks. Only employers have the power  
5 and authority to do this.

6 Thus, I believe that the legal burden fairly and  
7 appropriately should fall on employers to insure that  
8 workers take their meal breaks. The fact is that many  
9 workers, particularly low wage earners in the industries  
10 that I've just mentioned, janitorial, construction,  
11 restaurant, garment, they already experience tremendous  
12 pressure to forego their meal breaks, or risk losing a  
13 job they desperately need.

14 Weakening the Labor Commissioner's current policy  
15 with respect to rest -- particularly meal breaks only  
16 exacerbates this pressure and encourages unscrupulous  
17 employers to exploit the law. The lower standard  
18 proposed by the Starbucks court would give employers the  
19 ability to comply with the letter of the law by simply  
20 posting a break notice in English, or burying the notice  
21 in a personnel manual. I believe that that would meet  
22 the offer requirement and --

23 COMMISSIONER BRADSTREET: Okay. I'm sorry. You're  
24 going to need to wind this up. But I encourage you to  
25 submit your legal analysis in writing.

1 MR. TELLO: Just one more sentence.

2 COMMISSIONER BRADSTREET: One more sentence?

3 MR. TELLO: Yes.

4 COMMISSIONER BRADSTREET: Okay. One more sentence.

5 MR. TELLO: Proving that a worker was forced to  
6 forego his meal breaks would be too high an evidentiary  
7 standard to meet; thus, allowing employers to avoid  
8 liability. Thank you.

9 COMMISSIONER BRADSTREET: Okay. Thank you.

10 MR. MOXLEY: Madam Commissioner, thank you for  
11 giving us this opportunity. My name is Tom Moxley. I'm  
12 a Business Agent for Ironworkers Local 433 here in  
13 Los Angeles. I'm also president of the LA/Orange County  
14 Building Construction Trades Council and its 140,000  
15 members in LA/Orange County.

16 The current article 16 and the meal breaks, the  
17 construction trades, those under collective bargaining,  
18 had that long before California ever came up with it.  
19 It's easily enforced. I've been on both sides, on  
20 management for the company, and now management for the  
21 union. It's easy to schedule meal periods. If we get in  
22 a critical point, especially with the ironworkers, and  
23 it's a safety issue, they go into overtime. Then they're  
24 afforded their meal break on company time with overtime  
25 wages. It's never been an issue.

1           Our contractors for over 100 years have given rest  
2 periods in the middle of the day. They realize the more  
3 production by having a good safe workforce that isn't  
4 tired and fatigued. The meal periods are flexible. You  
5 can have it at four, four and a half, five. We do it all  
6 the time.

7           If a truck driver can't find a place to pull over  
8 between four and five hours in an hour period,  
9 something's wrong. My son's a Teamster. He's a truck  
10 driver. It's not an issue.

11           Thank you. We ask you to keep the current  
12 provisions.

13           COMMISSIONER BRADSTREET: Thank you very much, sir.  
14 Please, no applause. Thank you.

15           MR. YUNG: Good morning.

16           COMMISSIONER BRADSTREET: Good morning.

17           MR. YUNG: Good morning. My name is Hu I. Yung. I  
18 live in Roland Heights, California. I am a Cook. I have  
19 worked in several Southern California restaurants for the  
20 past five years. From this experience, I know personally  
21 how important it is for restaurant workers to take their  
22 30-minute meal breaks and 10-minute rest breaks. I also  
23 know how difficult it actually is to be given an  
24 opportunity to take the meal and rest breaks.

25           In our profession we are surrounded by food.

1 Ironically, unless an employer makes sure and informs us  
2 that the cooks and waiters can take 30-minute breaks,  
3 we're never able to stop because the restaurant is busy  
4 and there is always work to do. It is important for the  
5 employer to make sure that if the restaurant is busy,  
6 workers can cover for each other during meal breaks. As  
7 an employee, I could not ask another worker to cover for  
8 me without my manager's approval.

9 Being able to take a meal break is an incredibly  
10 important protection for restaurant workers. It should  
11 not be changed or watered down.

12 In 2006 I was working for a restaurant. I worked  
13 six days a week, twelve days -- twelve hours a day. I  
14 was never able to take an uninterrupted 30-minute break,  
15 but only a 20-minute meal break, during which I also had  
16 to work. The restaurant was very busy. I had to work  
17 constantly. It was very exhausting. On some days we  
18 were so busy that I could not even take a 10-minute rest  
19 break.

20 With the help of the Neighborhood Legal Services of  
21 Los Angeles County I was able to file wage claim before  
22 the Labor Commissioner against my former boss for failure  
23 to pay overtime, failure to provide meal and rest breaks.  
24 I am fighting to make sure that my previous employer  
25 gives employees the proper meal rest breaks, and to make

1 sure that my rights are given to me.

2 The employer should be the one to make sure that I  
3 take my meal and rest breaks. Even if I knew I had this  
4 right, I would have been afraid to raise it because I was  
5 afraid of being fired.

6 As restaurant workers we work closely with -- in  
7 close proximity to fire and other equipments for heating  
8 food. Mistakes can lead to very severe injuries.  
9 Employers should be one to inform us that we have the  
10 right to take the meal breaks and rest breaks.

11 If we do not receive sufficient rest during our  
12 breaks, we are prone to making mistakes while preparing  
13 food for the customers. Some mistakes could lead to  
14 Health and Safety Code violations and even make the  
15 customers sick. Therefore, if we are given proper meal  
16 and rest breaks, the customer is also very protected.

17 Workers do not have the same advantages as  
18 employers. They are in a better position to know the law  
19 and to inform us about the law. Workers who need these  
20 protections should not have their rights taken away.  
21 Please do not take them away. Thank you.

22 COMMISSIONER BRADSTREET: Thank you.

23 MR. YUNG: Thank you.

24 COMMISSIONER BRADSTREET: Thank you very much.

25 UNIDENTIFIED FEMALE: The next five speakers will be

1 Eric Bork, Deborah Suto, Kong Chin Ching, Yu Senteo, and  
2 Lorraine Visio.

3 MS. SUTO: Good morning. My name is Deborah Suto.  
4 I'm here to testify on behalf of the Legal Aid Foundation  
5 of Los Angeles, OR LAFLA, and the low wage workers we  
6 serve. LAFLA is a nonprofit public interest organization  
7 that has provided free civil legal service to low income  
8 people in the metropolitan Los Angeles area for close to  
9 80 years.

10 Through community education, litigation and policy  
11 and administrative advocacy, LAFLA annually assists  
12 thousands of workers in a range of low wage industries.  
13 Free of charge and without taking attorneys' fees, we  
14 regularly represent low wage workers who seek remedies  
15 for their employer -- from their employer's failure to  
16 provide state-mandated meal and rest breaks.

17 I would like to highlight the difficulty of  
18 enforcing the meal and rest breaks at the workplace now,  
19 especially for some of the most vulnerable workers who  
20 toil in the low wage industries.

21 Over the past three and a half years LAFLA has been  
22 collaborating with the DLSE office in downtown  
23 Los Angeles by conducting a bi-monthly self-help clinic  
24 where we assist workers seeking help with wage  
25 calculations, and preparing the initial claim for them.

1 We are very appreciative of this opportunity to help both  
2 workers and the DLSE office deputies for it has given us  
3 additional insight to challenges facing low wage workers.

4 In the past two years we were able to assist 488  
5 workers. Out of these workers, 341 complained that they  
6 were not afforded a meal or rest break, or both. That is  
7 close to 70 percent of the workers we were able to help  
8 at the Labor Commissioner's office alone.

9 From my experience at the clinic, workers either  
10 could not demand breaks out of fear of retaliation, or  
11 did ask their employers but were denied a proper rest or  
12 meal break. Often workers were not even aware of their  
13 right to take a break because no one else in the company  
14 received such a meal/rest period.

15 These complaints come from fruit pickers, garment  
16 workers, cabinet makers, truck drivers, carwash workers,  
17 admin assistants, and many other workers in other  
18 industries. These are workers who do not need to be  
19 asked twice to take a break.

20 Based on this significant snapshot, it is telling  
21 that so many employers already fail to respect workers'  
22 rights of State-mandated meal and rest breaks. If so  
23 many workers currently are unable to enforce their rights  
24 to guaranteed meal and rest breaks, providing employers  
25 with loopholes under the guise of flexibility would only



1 increase the percentage of violations.

2 And furthermore, there already exists a proper  
3 balance of flexibility and work protection in the law.  
4 For example, lunch breaks can be waived by mutual consent  
5 if the workers are in shifts fewer than six hours. There  
6 are also on-duty lunch breaks. And you can make up time  
7 during the week without going into overtime.

8 And just to point out that we should not forget that  
9 those who actually come to the Labor Commissioner clinic  
10 with us or LAFLA or other workers' rights organizations  
11 are those who are actually brave enough to seek to  
12 enforce their rights. They're also informed enough to  
13 know where to file or to seek help. Let us not forget  
14 the countless others who are unable to come forward.  
15 Thank you for the opportunity to testify.

16 COMMISSIONER BRADSTREET: Thank you. And thank you  
17 very much for working with us on the clinic.

18 MR. BORK: Good morning. Thank you very much for  
19 listening today. My name is Eric Bork. I'm a Regional  
20 Manager. I work with TGI Friday's in the restaurant  
21 industry. And I'm speaking on behalf of not only myself  
22 from the corporate side of it, but also from the employee  
23 side of it.

24 First, from the employee side of it, you know, it is  
25 very difficult for the employees, servers particularly,

1 bartenders, to want to leave their stations. You know,  
2 we've already heard that earlier. But it is a loss of  
3 money for them. You know, it's an industry that relies  
4 heavily upon gratuities. And when they do leave their  
5 tables, service does suffer from somebody taking over a  
6 section for them. And it is a loss of money.

7 From the management side of it, it's very difficult  
8 to enforce those. We have situations where we have  
9 employees that will clock out for a break, and you've  
10 sent them on a break. And you come back and you see them  
11 back in their section again trying to work because  
12 they're afraid of losing the money. And that particular  
13 time is difficult for us because it puts us in a position  
14 of enforcing them with documentation, writing them up.  
15 We've yet to had to fire somebody for it, but we do have  
16 to document people numerous times for it.

17 Also, just the sheer number of people within a  
18 restaurant at any given time. The staff, it makes it  
19 very difficult to get the breaks done in an appropriate  
20 amount of time. You know, we do have situations where  
21 once an employee clocks on, you know, an hour into their  
22 shift, it could be an eight-hour shift, and they're  
23 having to take their break right then and there.

24 When you have 40 or 50 people on during any given  
25 shift, it makes it difficult to get them all done before

1 that five-hour period. Especially when it gets closer to  
2 that middle four-hour period, which would be ideal in  
3 anybody's situation.

4 So I do agree with the fact that breaks should be  
5 given. We don't deny that. We just do ask for  
6 flexibility with when they are given. Thanks.

7 COMMISSIONER BRADSTREET: Thank you.

8 MR. CHING: Hello. My name is Xong Con Ching.

9 COMMISSIONER BRADSTREET: Good morning.

10 MR. CHIN: I live in Monterey Park, California. My  
11 profession is Cook. I have worked in several restaurants  
12 in Southern California over the past five years. I work  
13 in restaurant in 2005 and 2006. I worked 6 days a week,  
14 12 hours a day, which meant 72 hours a week. I was only  
15 given 20 minutes for a meal break per day. During the  
16 meal break I also had to work.

17 Therefore, I have ample experience to understand  
18 that it is very difficult for restaurant workers to take  
19 their 30-minute meal breaks and 10-minute rest breaks.  
20 It is very difficult to get employer to actually give us  
21 the 30-minute meal breaks. Unless the employer informs  
22 us that we have the right to take the 30-minute breaks,  
23 we cannot stop work because we have a lot of work to do.

24 Being able to take a meal break is a very important  
25 protection. The employer should be the one to make sure

1 that we are able to take our meal breaks. I cannot ask  
2 another worker to cover for me during the meal breaks  
3 without my manager's approval.

4 The restaurant was very busy. I had to work  
5 constantly. It was very exhausting. On some days we  
6 were so busy I could not even take 10-minute rest break.

7 According to American law we should be given  
8 holidays, and we were not given holidays.

9 (End of cassette 1, side B; continuing  
10 on cassette 2, side A.)

11 UNIDENTIFIED FEMALE: I think we'd like to make an  
12 initial announcement. For all of those who parked out in  
13 the parking lot G4, you do need to get a parking pass.  
14 Otherwise they will ticket you. So just to make sure  
15 that everyone's already accommodated for that.

16 The next five speakers will be Sara Singer, Troy  
17 Duvald, Dennis Swanson, Mike Rubin, and Craig Bokin.

18 MS. SINGER: Good morning. I'm Sara Singer with the  
19 Writers Guild of America West. I'm the lead organizer on  
20 the campaign to organize reality television.

21 I've heard today from a lot of employers about  
22 workers who are angry. In my industry workers are angry,  
23 too. Workers in nonunion television production in  
24 Hollywood work long hours. A typical day can be anywhere  
25 from 12 to 20 hours, sometimes 6 to 7 days a week. I

1 have yet to meet anyone on my campaign being properly  
2 paid overtime, or afforded meal breaks in accordance with  
3 California labor law.

4 My concern today is that we're hearing from good  
5 employers who want to do the right thing. Unfortunately,  
6 I see an industry that day in and day out does not do the  
7 right thing. These protections are written for the  
8 lowest common denominator of employer and the most  
9 vulnerable of California's employees. When I review the  
10 working conditions in nonunion television production, I  
11 have to ask you how you could ever consider weakening the  
12 protections for workers.

13 Last year we filed dozens of claims with the  
14 Department of Labor Standards Enforcement for overtime  
15 and meal penalties. We have yet to get to a hearing. I  
16 fear that your agency is massively understaffed and  
17 massively under resourced. I ask that you consider  
18 heavily the implications of loosening any protections for  
19 workers. Thank you.

20 COMMISSIONER BRADSTREET: Thank you very much.  
21 Please, no applause. Thank you.

22 MR. BODKIN: Good morning.

23 COMMISSIONER BRADSTREET: Good morning.

24 MR. BODKIN: My name is Craig Bodkin. I'm the CEO  
25 of a local messenger firm called 24/7 Delivers. I think

1 it's pretty obvious after listening to the previous  
2 speakers that this is an issue that can definitely not be  
3 painted with a broad brush.

4 I'm in the same day delivery business, and we are in  
5 severe need of retroactive emergency legislation amending  
6 the meal break and rest period regulations as they  
7 pertain specifically to the courier and messenger  
8 industry. The need for flexibility in this area for this  
9 type of business cannot be overstated.

10 I come here in support of courier business owners  
11 and drivers who work across the state of California.  
12 Many of these owners, like myself, came into this  
13 business as drivers, and can therefore understand this  
14 issue from both perspectives. In fact, as far as the  
15 drivers at my company are concerned, this is a nuisance  
16 and total nonissue.

17 We are in the on demand deliver business. There is  
18 no other segment of the transportation industry that must  
19 function under such unique protocols. We are the  
20 constant beck and call of our clients. We are not  
21 afforded the luxury of next day by 10:00 a.m. or longer  
22 delivery windows.

23 Many times we are requested to meet delivery  
24 parameters within 30 to 60 minutes. If forced to  
25 schedule rest periods and lunch breaks, we estimated

1 conservatively that we will have to overstaff by 20  
2 percent in order to meet our clients' service demands.  
3 This additional staff, of course, will not be supported  
4 by additional revenue, and our drivers will be hit where  
5 they live, in their wallets.

6 This legislation was not passed because of an outcry  
7 in our industry from drivers who are going hungry, or  
8 were not sufficiently rested. It came from somewhere  
9 else. I happen to employ both union and nonunion  
10 drivers, and they would all appreciate the freedom to  
11 choose when they break and when they lunch, as would I.

12 The demand for immediate service and the moment  
13 swings that vary drastically from one hour to the next  
14 are as predictable as the weather in the Bermuda  
15 triangle. For example, I cannot give you an average call  
16 volume that we handle on a daily basis. I can only offer  
17 a range. We deliver between 500 and 650 calls on a so-  
18 called average day. But we also experience days where  
19 call volume spikes put us closer to 800. How can you  
20 apply this type of rigid structure to a business model  
21 that is in a constant state of flux? Believe me, I wish  
22 I could know that every day my phone would only ring 600  
23 times. If that was the case, this would be simple. But  
24 that is not the case.

25 In closing, I must say that I believe the only

1 parties who will benefit from this are going to be the  
2 attorneys who will seek legal advantage and opportunity  
3 by exploiting this legislation to target well-meaning  
4 owners in this industry like fish in a barrel, forcing  
5 many out of business with the cost of litigation, and  
6 putting those who work for them out of a job. Thank you  
7 for your time.

8 COMMISSIONER BRADSTREET: Thank you. Please, no  
9 applause. Please.

10 MR. DUVALD: Hi. My name is Troy Duvald. I'm a  
11 reality television Writer/Producer. You've just heard  
12 from Sara Singer that I've been working with for quite a  
13 while in trying to help get reality television organized.  
14 I'd like to give you a few of my own personal experiences  
15 very quickly at the risk of being a little bit redundant.

16 I've worked on several shows for major networks  
17 where meal breaks are afforded to our union crews, but  
18 the increasing nonunion staff, which includes the writers  
19 and producers of those programs, there is no meal break  
20 provided for us. It's catch as catch can. Sometimes I'm  
21 on site. Sometimes I'm being taken somewhere else. I've  
22 watched my camera crews break and eat the catered meal  
23 that has been brought in for them while I am unable to  
24 eat.

25 Just to give you an idea of what's going on with



1 these shows, I won't give you my personal example because  
2 the first one I was mentioning to you was just a few  
3 years ago. A recent show on CBS just worked 52 days  
4 straight with no days off. Another CBS show 24 hours  
5 straight with no breaks.

6 These people, they're not able to eat. They're not  
7 able to take their meal breaks. We would love to see  
8 more enforcement of the existing rules that are there.

9 I think that in a situation where you have a union  
10 agreement, as we're hearing from so many of these great  
11 people that work with the Teamsters and so on, if there's  
12 a union in place that covers your meal breaks, let's  
13 honor that. But for those of us that are working without  
14 the protection of a union agreement, the enforcement has  
15 just got to be there. And I thank you very much for your  
16 time.

17 COMMISSIONER BRADSTREET: Thank you very much.

18 UNIDENTIFIED FEMALE: Dennis Swanson or Mike Rubin.

19 MR. SWANSON: Hi. I'm Dennis Swanson. I came to  
20 California about 30 years ago from Nebraska. I started a  
21 business. It now employs over 1,000 in the state and 500  
22 in other parts.

23 COMMISSIONER BRADSTREET: Would you mind stating  
24 what the name of your business is?

25 MR. SWANSON: Lamps Plus.

1           COMMISSIONER BRADSTREET: Oh, okay. Thank you.

2           MR. SWANSON: And we pride ourselves on the fact  
3 we've had employees who've been with us since we started  
4 the company.

5           This new -- this lunch law has forced us to write up  
6 our best employees and suspend them because they're  
7 taking 28-minute lunches.

8           Also, we're in a retail environment where people are  
9 paid on a commission. So you have examples of they may  
10 have a contact with a customer that's driven 500 miles,  
11 speaks his language. They get in the middle of a sale  
12 for \$5,000, of which he's going to get, you know, at  
13 least 5 or 10 percent commission, he has to leave that  
14 sale and go take a lunch break. If he doesn't, we have  
15 to write him up.

16           My employees are very angry. They're angry at me  
17 because I'm forcing them to take breaks that hurts their  
18 income as commission salespeople. I could fill this  
19 entire room with over 1,000 Lamps Plus employees who  
20 would be standing up here saying how angry they are at  
21 me. And I tell them to direct their anger at the State.  
22 But they don't understand that. They say, why are you  
23 writing me up and suspending me for taking 28-minute  
24 lunches? And that's hard to explain to them.

25           So the way around that is to make them take 45-

1 minute lunches, for which they aren't paid, so they spend  
2 an extra 15 minutes at work, so they at least take the  
3 30-minute lunch. Or they're forced to stand at time  
4 clocks, standing there watching the time clock until the  
5 thing turns to 30 minutes.

6       So between reducing their income and forcing to  
7 write them up for clocking in a minute or two early, it  
8 puts us in kind of an untenable situation. And again,  
9 these are people that have worked for us for 20 and 30  
10 years.

11       The bottom line is this is a one-size-fits law/  
12 regulation, and it doesn't fit everybody. It hurts our  
13 business and it hurts our employees. And something needs  
14 to be done to create a situation where the employees are  
15 not being penalized.

16       Essentially what's happened, I think this  
17 regulation's been written around certain abusive  
18 businesses. And now we're abusing the majority of  
19 employers of the state. Thank you.

20       COMMISSIONER BRADSTREET: Thank you very much.

21       MR. RUBIN: Hi. I'm Mike Rubin. I'm a  
22 restaurateur. I have a restaurant in Pasadena called The  
23 Melting Pot.

24       COMMISSIONER BRADSTREET: Called what? I'm sorry.

25       MR. RUBIN: The Melting Pot. I came up here with a

1 long speech. Drove two hours. And on the way was  
2 informed by my attorney that I could not really speak  
3 what I wanted to say. And the reason why, the gentleman  
4 prior to me, or two times -- two before me, talked about  
5 perhaps shakedown lawsuits causing small companies to go  
6 out of business.

7 Thirty days after the Kenneth Cole decision, our  
8 small little mom-and-pop restaurant was served with a  
9 class action lawsuit by an attorney who had previously  
10 tried to shake us down for something else. So now that  
11 attorney has come back and found something that may be  
12 bigger to try to shake us down with.

13 I would say that the impact on our business besides  
14 the lawsuit has been severe in going from providing for  
15 breaks to policing breaks. We now employ a full time  
16 manager who does nothing but monitor breaks. That's --  
17 in addition to being very expensive, it creates an  
18 environment in our restaurant that is a little bit more  
19 like trying to gather the children on the schoolyard,  
20 than inspiring to deliver the best possible service to  
21 our guests. Which is the reason why people want to come  
22 to our restaurant and pay us money to serve them.

23 So I wish I could go into more specifics because I  
24 really came here to cry on your shoulder. But,  
25 unfortunately, I can't do that. And I just hope that at

1 some point there's some sanity back with regards to this  
2 issue. Thank you.

3 COMMISSIONER BRADSTREET: Thank you. Thank you for  
4 coming.

5 UNIDENTIFIED FEMALE: The next five speakers will be  
6 Maria Durazo, Steven Gudle, David Lazinski, Juan  
7 Balasenor, and Gabriel Zaval.

8 MS. DURAZO: Good morning.

9 COMMISSIONER BRADSTREET: Good morning.

10 MS. DURAZO: Commissioner Bradstreet, welcome and  
11 congratulations.

12 COMMISSIONER BRADSTREET: Thank you.

13 MS. DURAZO: My name is Maria Elena Durazo and I'm  
14 the Executive Secretary Treasurer of the Los Angeles  
15 Federation of Labor in Los Angeles County. Our  
16 Federation of Unions represents over 800,000 workers,  
17 from teachers to firefighters to construction workers,  
18 janitors, hotel and restaurant workers.

19 I'm here today to voice opposition to any proposal  
20 that will weaken or lead to taking away a fundamental  
21 right to a guaranteed lunch break. Regular breaks are  
22 very important, especially with regards to preventing  
23 injuries to the workers and coworkers.

24 For example, I come out of the hotel and restaurant  
25 industry. Housekeepers have a room quota, and they are

1 always under pressure from management to complete their  
2 room quota. Under that kind of pressure, they are very  
3 inclined to skip their meals and their breaks. If there  
4 is not a guaranteed break, then that's exactly what they  
5 will do. They'll have to succumb to that fear.

6       Imagine the cleaning of bathrooms, vacuuming up to  
7 30, and cleaning beds, making beds, up to 30 beds a day,  
8 imagine what that would be like without a guaranteed  
9 lunch break. Ninety-five percent of hotel housekeepers  
10 are women, low age, and no rights on the job. We have to  
11 make sure that a fundamental humane right like a break is  
12 guaranteed to them.

13       Also, the economy has changed so much so that we  
14 have more and more jobs that pay less and less. That  
15 means, and I'm sure you hear quite often, that workers  
16 have to work two or three jobs in order to sustain their  
17 families. That's just the reality today. Imagine that  
18 reality and not having the kind of breaks that they  
19 really, really need to survive and get by for their  
20 families.

21       So we're concerned here not especially about workers  
22 who have union protections, because there is another  
23 forum in which to address these issues, but especially  
24 about workers who do not have union protections.

25       I know there were mentioned industries from the

1 restaurant industry. Having come out of that industry,  
2 workers themselves, even tipped employees, they know how  
3 to plan and schedule their breaks where it does not  
4 impact them in a negative way. Having worked with them  
5 for many, many, many years I know that they need and  
6 demand that lunch break because they're on their feet and  
7 they know when it's the peak hour of serving those  
8 customers, which they really care about and their tips  
9 depend on, that they still need that break guaranteed and  
10 protected for them.

11 Please, there are many ways in which employers'  
12 needs are protected. There's waivers that are given to  
13 them. Taking away or weakening a lunch break is not the  
14 way to protect employers in businesses.

15 We also care about the employers. Without the  
16 employers staying in business, workers would have no  
17 jobs. Please do your best. And again, I welcome you to  
18 the Commission. Thank you very much.

19 COMMISSIONER BRADSTREET: Thank you very much. Yes.

20 MR. ZOLINSKI: Good morning. Thank you for having  
21 us. My name is Dave Zolinski. I'm a Regional Manager  
22 for TGI Friday's restaurants.

23 COMMISSIONER BRADSTREET: I'm sorry. Which  
24 restaurants?

25 MR. ZOLINSKI: TGI Friday's.

1           COMMISSIONER BRADSTREET: Thank you.

2           MR. ZOLINSKI: You're welcome. I'd first of all  
3 like to say that the issue of unpaid breaks is not the  
4 main issue. If we were talking about paid breaks, that  
5 would be us having to pay our employees for the 30  
6 minutes that they were off the clock. I believe we would  
7 have a completely different argument. Because this is  
8 not a money issue for our company.

9           In fact, it does not cost us any extra money to  
10 allow our employees to take an unpaid 30-minute break.  
11 But who does it actually cost? It costs our employees.  
12 It costs them both with their time and with the money  
13 they're allowed to make.

14           The majority of my kitchen employees have two jobs.  
15 And that added extra half hour that we require them to  
16 stay on instead of working a five-and-a-half hour shift,  
17 they now need to work a six-and-a-half hour shift, that  
18 extra time costs them to go from one job to the next, to  
19 take care of their family in between their jobs, and be  
20 able to possibly stop at their house and do what they  
21 need to do personally.

22           I believe that we need to make this an employee  
23 choice. We need to make this more flexible from their  
24 perspective, and for them to decide when they should take  
25 their break. I do believe they should be entitled to an



1 unpaid break. But I think, if it were my choice, I would  
2 allow them to take that within that eight-hour period  
3 regardless of what time mandated by state law. Thank  
4 you.

5 COMMISSIONER BRADSTREET: Thank you.

6 MR. GRUDE: Good morning. Thank you for the  
7 opportunity to speak to you today. My name is Steven  
8 Grude. I'm an attorney with Littler Mendelson. As you  
9 may know, Littler Mendelson is a national law firm that  
10 represents employers throughout the country. We have  
11 thousands of clients across the country, and hundreds, if  
12 not thousands, with operations here in California.

13 And today I'm here to speak to you on behalf of a  
14 client, KB Home, a national home builder. And the  
15 problems facing KB Home with the --

16 COMMISSIONER BRADSTREET: Sorry. What was the  
17 client?

18 MR. GRUDE: KB Home.

19 COMMISSIONER BRADSTREET: KP?

20 MR. GRUDE: KB as in boy.

21 COMMISSIONER BRADSTREET: Thank you.

22 MR. GRUDE: Home. They're a national home builder.

23 COMMISSIONER BRADSTREET: Thank you.

24 MR. GRUDE: They have extensive operations in  
25 California. And really, their problems with the

1 regulations are not just unique to KB Home and in their  
2 industry, but across the board along some of the things  
3 we've heard today.

4       There's a fundamental difference between trying to  
5 stop employers from denying an employee a meal break,  
6 i.e., providing a meal break to employees, and making  
7 employers the insurer or the policemen of breaks. The  
8 intent of the law to begin with was to make it so an  
9 employer could not say to an employee, you must work  
10 through your break without compensation.

11       But what we have here now is employers feeling  
12 obligated to make sure that an employee takes a 30-minute  
13 break, and having to exert a lot of effort to do so.  
14 Even when the employee him or herself does not want to  
15 take the break.

16       For example, using an example for KB Home, KB Home  
17 has sales representatives that are on site at new home  
18 construction sites. And as with other examples you've  
19 heard here today, if the sales representative is speaking  
20 with a customer and is in the middle of a tour or the  
21 middle of trying to make a sale, it's -- that person does  
22 not want to have to take a break immediately to comply  
23 with the meal regulations. And would be better served to  
24 have the flexibility of taking that break at another  
25 time.

1           You also have instances throughout many industries  
2 where employees come back and punch in to get back to  
3 work on time. They punch in to work, you know, at the  
4 27-minute mark, or the 28 mark. And now all of a sudden  
5 you have the precarious situation where the employer is  
6 potentially on the hook because the employer has not  
7 provided the quote, unquote, "30-minute uninterrupted  
8 break." But yet, everybody had the same intent, which is  
9 that the employee got the break, and the employee was  
10 just trying to come back and be on time back to work.

11           And so, again, I just want to preach the same  
12 flexibility. We've really gotten away from self-  
13 determination. Our society as a whole, we let people  
14 vote, we let people who are over 21 gamble and spend  
15 their money, we let people go buy alcohol. But yet, we  
16 trust the nurses that have spoken today with people's  
17 lives, people transporting goods. But yet, when it comes  
18 time to choosing when they take 30 minutes to take their  
19 break, or where do they go to eat, all of a sudden the  
20 government is telling them exactly that they have to take  
21 it, exactly how long and exactly when. Thank you.

22           COMMISSIONER BRADSTREET: Thank you very much.

23           MR. ZAVALA: Hi. My name is Gabriel Zavala.

24           COMMISSIONER BRADSTREET: Hi.

25           MR. ZAVALA: I want to let you know how important

1 are the breaks to me. I was working -- I'm from Brea,  
2 California, where the heat is over like over the  
3 hundreds. I was at this company working for like for  
4 nine to ten hours, or eleven hours some days. And they  
5 didn't want to give me no breaks, right? So I was  
6 working for four years there. So I told my employer why  
7 didn't he give us no breaks. And he said there was no  
8 such laws giving 10-minute breaks. So I told him, yeah,  
9 there's a law that we're supposed to have 10-minute  
10 breaks.

11 So one day after four years of working there for ten  
12 to -- ten hours a day with no breaks, I told him that.  
13 And that I was going to go to the Labor Commission to ask  
14 for -- to tell me to -- so I can have my rights. So I  
15 call them, and the Labor Commission said that I was  
16 supposed to take my 10-minute breaks.

17 So the next day I went and tell my foreman, and he  
18 fire me for asking for my rights. So I took him to  
19 court, to the Labor Commission. I won. And my  
20 coworkers, they were afraid of asking for their breaks.  
21 I was the only one that went forward. But I got fired.  
22 But now I'm happy because my employers, now they're  
23 giving the breaks. But I got another job now. But I got  
24 fired from them. But we won on that case. Thank you.

25 COMMISSIONER BRADSTREET: Thank you.

1 MR. VILLASENOR: Good morning. My name is Juan  
2 Francisco Villasenor, and I live in the city of Rosemead.  
3 From August 21st, 2000 to May 21st, 2007, I worked as a  
4 driver for a nonprofit organization called Elarga. And  
5 one time I became the director's assistant.

6 As the driver, my responsibilities were to pick up  
7 disabled persons at their homes and school. As assistant  
8 to director I tried to cover routes, took pictures, and  
9 talked to CHP when there were accidents. And if there  
10 were car breakdowns, I had to take another vehicle so  
11 that the other drivers could continue transporting the  
12 clients and making the route.

13 When I was the director's assistant, it was  
14 impossible for me to take my lunch break because I had a  
15 lot of things to do, including what I mentioned, and  
16 cover -- what I mentioned. And because I had to look for  
17 services for our cars and find places that would give us  
18 the best quote for our car services. If I was able to  
19 eat on the job, I usually had to do it while working  
20 because I was so busy. I could rarely take the time to  
21 take a 30-minute break.

22 It impacted me not having time to eat and rest  
23 because my body was used to eating at the same time. And  
24 it was difficult to do my job while I was hungry.

25 In my position, I had no support from my supervisor

1 to take a meal or rest break. All of us should have had  
2 a meal break and rest break. Unfortunately, no one  
3 had -- one had to be doing its job constantly. The  
4 priority was to get the job done and think about eating  
5 later.

6 I would like to say that breaks are something that  
7 workers have gained with time. And instead of weakening  
8 them, they should strengthen them. Employers should  
9 maintain their employees happy so that they can be more  
10 efficient. Thank you.

11 COMMISSIONER BRADSTREET: Thank you very much.

12 UNIDENTIFIED FEMALE: The next five speakers are  
13 April Fogel, Alicia Hernandez, Juan Alvarado, Louis Puli,  
14 and Thelma Sanchez.

15 MS. FOGEL: My name is April Fogel. I'm the  
16 Director of Operations for TGI Friday's. We have over 29  
17 locations here in California. And I've never been to a  
18 forum such as this, so first I wanted to congratulate you  
19 on your new position and wish you all the best.

20 COMMISSIONER BRADSTREET: Thank you.

21 MS. FOGEL: It's very -- you've got your work cut  
22 out for you, obviously. I really felt compelled to come  
23 today and kind of talk about how hard it is from a  
24 management perspective to try and balance it. You know,  
25 I hope that -- I guess I really just wanted to stress

1 that the employees a lot of times take it out on us, and  
2 they really feel that we're being unfair when we're  
3 trying to manage the break situation.

4 And yes, we've had to adopt a, you know,  
5 documentation/termination ultimately, you know, if you  
6 don't comply with the breaks. And it was because the  
7 employees were taking a stand with us as the business  
8 owner, because they felt that it was unfair and unjust.  
9 And, you know, at some point we had to try and protect  
10 ourselves, you know, because they were refusing to take  
11 their breaks. They just didn't want to take them.

12 So I'm really glad that you have a position where I  
13 can go back and tell them that they're able to write to  
14 you, you know, over the next few weeks if they're not  
15 able to be here today. I think that that would be really  
16 important for you to hear their side. Thank you.

17 COMMISSIONER BRADSTREET: Thank you very much.

18 MS. HERNANDEZ: Good morning. My name is Alicia  
19 Hernandez. I was working in Napa grapes in Coachella  
20 Valley. My problem is that a company where I did work,  
21 they gave us only two times of rest, one for half an  
22 hour, and then for ten minutes. Our work was hourly, but  
23 I think it was by contract because our work I think was  
24 by -- for -- because of production, not by hour. Because  
25 I was penalized if I didn't do production.

1 I would like for you to stop the injustices that are  
2 in the fields, especially with the rest periods. Because  
3 there are a lot of people who are older, and we need that  
4 three periods of rest. I wish that you can stop these  
5 injustices, and you could come over and visit us in the  
6 Valley of Coachella. Thank you.

7 COMMISSIONER BRADSTREET: Thank you. I'll look  
8 forward to it.

9 MR. ALVARADO: Good morning.

10 COMMISSIONER BRADSTREET: Good morning.

11 MR. ALVARADO: My name is Juan Alvarado. I live in  
12 the city of Rosemead. I worked as a driver from 2004 to  
13 2006. I transported disabled persons from their homes to  
14 a school for disabled people.

15 My work was so busy that I rarely had time to take a  
16 rest break. I began working my first route at 6:45 a.m.  
17 until 8:30. I dropped off the clients and would return  
18 for more at 8:35. At 10:35 I would return to the  
19 Regional Center and I would inspect the bus until 12:00  
20 p.m.

21 Then we were supposed to have one hour lunch until  
22 1:00, but I could never take the whole hour. I would  
23 start a whole new route at 12:40, and be back at the  
24 Regional Center at 2:00 for a new route. I would finish  
25 at 4:00 or 4:20, depending on the traffic.



1           It impacted me much not having a rest break because  
2 I would get very tired. So that I would not lose my job,  
3 I remained quiet. But the injustice of not getting a  
4 rest break depressed me. Personally, it affected me in  
5 that I feel very stressed out with so much pressure at  
6 work, to the point that it caused family problems. The  
7 day that I tried to claim my rights I got fired.

8           The message I want to give is that there are already  
9 many employees who do not know or who are not able to  
10 enforce their rights to meal and rest breaks. If the law  
11 is weakened, workers will be further disadvantaged.  
12 Unfair employers will pressure employees to waive their  
13 rights to breaks. If the current law doesn't always  
14 protect workers' rights to breaks, weakening the law will  
15 only make things worse for workers. Thank you.

16           COMMISSIONER BRADSTREET: Thank you very much.  
17 Thank you.

18           MS. SANCHEZ: Good morning. My name is Thelma  
19 Sanchez. I work as a driver. And recently I spent two  
20 years working as a driver for kids with disabilities at a  
21 Regional Center.

22           My responsibilities were to pick up children from  
23 their homes and take them to the Regional Center, and at  
24 the end of the day pick them up from the Regional Center  
25 and take them to their homes. In the middle of the day I

1 took some children on field trips and took care of them.

2 My workdays started at 6:45 a.m. and went without a  
3 break until 4:00 or 5:00. At 7:00 I started picking up  
4 children until 9:40 a.m. After taking the last group of  
5 children to the Regional Center, we made sure that they  
6 had their lunches and money for the field trip. During  
7 the field trip we had to take care of the children. We  
8 had to make sure that they ate their food, washed their  
9 hands, and watch them over them the whole time because  
10 they were under our responsibility until 1:30 p.m.

11 I returned to the Regional Center at 4:00 or 5:00,  
12 depending on traffic. I did not have time to take any  
13 rest or meal break. I would eat during the day, but I  
14 ate while I watched over the children.

15 It affected me much not having a rest or meal break,  
16 but one continues because of the need to work. Simply, I  
17 could never eat in peace, and I would get very tired  
18 because all day long I had to be watching over the  
19 children.

20 I would say that it is indispensable that workers  
21 get a rest break after four hours of work and a meal  
22 break after five hours, because by working constantly one  
23 gets stressed out and one cannot work efficiently.

24 I want all of you to realize that all types of jobs  
25 that are repetitive are tiring. Simply being here

1 sitting down without working for two hours, it's tiring.  
2 Imagine what it is to work all day without a rest or meal  
3 break. Thank you.

4 COMMISSIONER BRADSTREET: Thank you very much.

5 MR. SANCHEZ: Good morning. My name is Antonio  
6 Sanchez. Since 2004 the Governor and other employers who  
7 don't accept union employees, we're under attack from our  
8 rights and that we're granted for a long time. In 2005  
9 we saw this very clearly when Governor make propositions  
10 for the state. I'm not talking for one employee, but for  
11 thousands of employees that live in Los Angeles. Working  
12 for a long time, for long periods of time affect every  
13 worker who has the same routine every minute.

14 From year 2002 in the Valley of San Fernando I  
15 worked with children who need special education. The  
16 ambience is very stressful and very stressful physically  
17 also. The situation for mental workers are very  
18 stressful, especially with the children. Since that time  
19 I've came individually and also with groups to stress the  
20 fact that this type of work is very stressful for a  
21 worker.

22 To work six hours continuously for the District of  
23 Los Angeles is very difficult for a person who has to  
24 take care of one, five or forty kids with incapacities.  
25 We're talking also about hotel employees who are forced

1 to work from 16 to 18 hours without breaks in situations  
2 that are very difficult.

3 The other conditions that are all these employees  
4 are paid very low for the work that they do. And these  
5 conditions affect the employee to work well because  
6 affects his health as well as mental health. Because, I  
7 repeat, there are thousands of employees who work four,  
8 six, ten, twelve, eighteen hours straight without the  
9 proper rest.

10 Finally, I will ask the Commission that all the  
11 employees in Los Angeles and all Southern California,  
12 that they are demonstrated that the work is not only for  
13 a just salary, but also for respect and dignity that  
14 every person has a right universally. Thank you.

15 COMMISSIONER BRADSTREET: Thank you. Thank you very  
16 much, sir.

17 MR. POLITE: Good morning. Still morning. I'm a  
18 bus driver for --

19 COMMISSIONER BRADSTREET: Your name, sir?

20 MR. PULI: Louis Puli.

21 COMMISSIONER BRADSTREET: Thank you.

22 MR. PULI: Out of Chula Vista. I work for Veolia.  
23 First year and a half I had no lunch. I had no lunch.  
24 But the company's changed their ways and I am extremely  
25 happy.

1           But this thing where they're talking about forcing  
2 people to have a lunch is counterproductive. I have a  
3 handful, about 33, of the employees that feel that the  
4 lunch is good, but they need something else. A choice to  
5 take their lunch or to not have their lunch. They might  
6 have other things more important to do. Pick up the  
7 children from daycare, whatever it might be. You know,  
8 there's other things besides lunch. There's other people  
9 speaking with me, or from my group, that feel that the  
10 lunch is a good thing, but they don't want to have it  
11 down their throat. That's basically it. Thank you.

12           COMMISSIONER BRADSTREET: Okay. Thank you very  
13 much, sir. So if you want to submit that -- you've got  
14 statement there from other workers?

15           MR. PULI: Yes, ma'am.

16           COMMISSIONER BRADSTREET: If you submit them to Jeff  
17 in the back there? He's got that kind of -- well, I  
18 won't comment on his tie. But anyway, that pastel tie.  
19 Thank you very much for being here, sir. He won't talk  
20 to me for the rest of the year now.

21           UNIDENTIFIED FEMALE: The next five speakers are  
22 Cynthia Roden, Monica Carillo, Jennifer Hall, Ken Ariart,  
23 and Sue Archibald.

24           MR. ARIART: Good morning. My name is Ken Ariart.  
25 I represent In and Out Burger.

1           COMMISSIONER BRADSTREET: Good morning.

2           MR. ARIART: We have 178 restaurants in the state of  
3 California, and we employ over 10,000 workers. Before I  
4 make any comments about the meal periods, I simply want  
5 to point out that In and Out Burger supports our  
6 associates having access to a meal period. We provide  
7 all of our workers a free meal when they work a shift  
8 independent of the number of hours they work. And I  
9 might also note that we try to be a responsible --

10                   (End of cassette two, side A; continuing  
11                   on cassette two, side B.)

12           MR. ARIART: Our personnel in our restaurants to try  
13 and accommodate an anticipated lunch rush. We employ a  
14 large number of people to work a flexible shift,  
15 somewhere between four and six hours. It's just the  
16 nature of our business, and it's not predictable.

17           Because of the current strict interpretation of the  
18 meal period requirements, we always have to err on the  
19 side of caution as it relates to meal periods. Our  
20 concern is, of course, if an individual works more than  
21 what we anticipate, then they would be eligible for that  
22 meal period. And, of course, it has to be given before  
23 the fifth hour.

24           So what we do as a result of that is we err on the  
25 side of caution. Sometimes someone who's scheduled to

1 work maybe only five or five and a half hours, perhaps  
2 four and a half hours, is asked to take a meal period  
3 after two and a half hours worked solely because we're  
4 concerned that they may end up working longer than the  
5 requirement and then the meal period's necessary. So in  
6 many cases we're asking people to work -- to be at work  
7 for four and a half hours, yet they're only going to be  
8 paid for four hours of time.

9       What we would recommend, what we would love to see  
10 is consistent with some of the proposed changes that were  
11 made back in May of 2005. Specifically, we feel relaxing  
12 the current mandate that the employer make the person  
13 take their meal period, relaxing that language such that  
14 you enable the person the opportunity to take the meal  
15 period, we feel that would be appropriate language. It  
16 would be beneficial for workers as well as employers.

17       And additionally, the proposed changes also address  
18 the question of whether it's given before the fifth hour,  
19 or relaxing it to the sixth hour.

20       In closing, we've heard some very compelling  
21 arguments today. And I know there have been cases where  
22 people have been denied work -- or access to meal  
23 periods. Certainly I feel that those employers should be  
24 held accountable. Those -- they should be provided. I  
25 just feel that by giving them the choice, it's in the

1 benefit of the worker as well as the employer. Thank  
2 you.

3 COMMISSIONER BRADSTREET: Thank you very much.

4 MS. HALL: Good morning.

5 COMMISSIONER BRADSTREET: Good morning.

6 MS. HALL: My name is Jennifer Hall. I'm a  
7 Registered Nurse. And I'm currently Interim Director for  
8 Cardiovascular Services at Mission Hospital. I've only  
9 had that for a couple of months. And prior to that I was  
10 managing the Cardiac ICU.

11 I'm also speaking from the nurse's perspective as I  
12 spent many years in clinical areas. I worked in  
13 emergency, cardiac ICU, oncology, neonatal ICU, and in  
14 occupational health.

15 I want to talk to you a little bit from the  
16 administrative side and a little bit from the nursing  
17 side. In our cardiac ICU, as in most places, nurses are  
18 working 12-hour shifts. They start at 7:00 a.m. or at  
19 7:00 p.m., ending 12 and a half hours later.

20 And I in particular want to address the five-hour  
21 mandate. Generally we have about 12 nurses working.  
22 That can be up to 15 nurses working. So, of course, in  
23 order to be a good manager and comply with this  
24 regulation, I took to my shared governance council a  
25 schedule that said to get all those people off the floor



1 by the fifth hour, which would be noon, that they would  
2 have to start their breaks at eight o'clock in the  
3 morning.

4 And you can imagine the response I got from these  
5 nurses that got there at 7:00 a.m., have to work 'til  
6 7:30 p.m., and have to now go on their lunch break at  
7 8 o'clock in the morning, and they weren't very happy  
8 with that.

9 They have difficulty with that schedule even if they  
10 can stick to a schedule. It is a place where unexpected  
11 things happen. They can't necessarily get to break when  
12 they're scheduled to go.

13 Nurses are professionals. We have a sense of  
14 responsibility for our patients. And nurses want to take  
15 a break when it make sense to them, not necessarily  
16 according to somebody's schedule.

17 For example, if a patient deteriorates and it's time  
18 for their break, the nurse will generally refuse to go on  
19 their break. Or if a physician shows up and they need  
20 that collaborative communication with a physician,  
21 they're not going to go on their break even if that's  
22 their scheduled time to go.

23 COMMISSIONER BRADSTREET: So what do you do? I mean  
24 what do you do there? You've got the patient needing the  
25 nurse, and the nurse is refusing to take the break. What

1 do you do?

2 MS. HALL: Then you have to punt to another person,  
3 and hopefully somebody else can go on break. And then  
4 you flip the times back. And it's just a very  
5 challenging thing to manage. And the charge nurses  
6 are -- and the break nurses are constantly trying to go  
7 back and forth and say, okay, well, we'll get to you then  
8 in another half an hour, and we're going to go and take  
9 this person now if we can get to them. And it just  
10 becomes -- it's such a dynamic environment, it's really  
11 hard to just go according to schedule.

12 I used to work as an occupational health person at  
13 an assembly plant. And there the employees all came in  
14 at 6:00 a.m., and at 10:30 a.m. they all went to break.  
15 They shut down the assembly line. It worked. You know,  
16 no complaints from the employees. No complaints from  
17 management. And then they all came back a half an hour  
18 later.

19 But that just doesn't work in a clinical area. We  
20 can't just shut down the unit and send everybody to break  
21 at the same time.

22 I talked to the nurses. The majority eat before  
23 their shift. They like a snack in the morning. They  
24 want to take their lunch breaks much farther into their  
25 shift. And essentially, they said, we want to eat when

1 we're hungry. We want -- we don't want to eat according  
2 to schedule. We want to eat when it makes sense to us,  
3 when we're comfortable leaving our patients.

4 And they're making life-and-death decisions. And  
5 they don't understand why we can't let them choose when  
6 to take their breaks.

7 COMMISSIONER BRADSTREET: Okay. Thank you very  
8 much.

9 MS. HALL: Thank you.

10 MS. ARCHIBALD: Good morning.

11 COMMISSIONER BRADSTREET: Good morning.

12 MS. HALL: My name is Sue Archibald and I'm a  
13 Cardiac Liaison Nurse and CIC Nurse at Mission Hospital,  
14 Mission Viejo. I work with Jenny. And I'd like to say  
15 that our unit has break and meal coverage throughout the  
16 day. And often when I'm asked to take my break, it's  
17 just not the right time. My patients' clinical status  
18 might not be right. There might be patient family  
19 dynamics going on. Or I just might not be hungry yet.  
20 So I really would like to have the option to choose when  
21 I will take that meal break.

22 I think a very healthy environment is breakfast at  
23 home, midmorning snack on your break, lunch around 1:00  
24 or 2:00, 5:00-ish in the afternoon break. Keeps your  
25 blood sugar stable. It keeps your energy level stable.

1 If I eat at 11:00 or 12:00 and I have seven hours ahead  
2 of me, I know that I'm zapped by the end of that five- or  
3 six-hour period.

4 I also feel we're in a period of a nursing shortage,  
5 and it's getting to a crisis. We're professionals.  
6 We're dedicated. And I really think we need the autonomy  
7 to make the choices of our meal time as we make life-and-  
8 death choices for our patient care. And I just think  
9 it's very important. Thank you.

10 COMMISSIONER BRADSTREET: Thank you very much.

11 MS. CARILLO: Hello.

12 COMMISSIONER BRADSTREET: Hello.

13 MS. CARILLO: I'm Monica. And I drive a  
14 transportation --

15 COMMISSIONER BRADSTREET: Okay. You're Monica  
16 Carillo? Okay.

17 MS. CARILLO: Carillo, yes.

18 COMMISSIONER BRADSTREET: Thank you.

19 MS. CARILLO: And I've had times where I didn't get  
20 my lunch. And now I do get my lunches. But I want to  
21 know -- I'd like to be able to make that decision myself  
22 whether I want to or I don't want to. It's as simple as  
23 that. It's just a choice. It's not that we're not given  
24 them. Before it was. Now it isn't. But it's just nice  
25 to have the choice. Or to go home early, or whatever.

1 And that's about it.

2 COMMISSIONER BRADSTREET: Thank you very much for  
3 being here.

4 MS. RODIN: Good morning.

5 COMMISSIONER BRADSTREET: Good morning.

6 MS. RODIN: My name is Cynthia Rodin. I'm a  
7 Teamster Shopster with Local 166. I also am a fixed  
8 route driver for Veolia Transportation. We are a private  
9 company. So, unlike my union brothers and sisters that  
10 work city and county, I am forced to take a lunch. I  
11 would like that flexibility in my schedule. We are union  
12 for a reason, so let the union do their job and negotiate  
13 our meals and breaks with our company. We worked hard to  
14 go union. So, thank you.

15 COMMISSIONER BRADSTREET: Thank you very much.  
16 Okay. Please, no applause.

17 MS. RODIN: Also, I have (inaudible).

18 COMMISSIONER BRADSTREET: Okay. So, wonderful. If  
19 you could turn them into -- oh, we have a new tie. Yeah,  
20 that's much more vivid. The red tie now. Okay.

21 UNIDENTIFIED FEMALE: The next five speakers will be  
22 Kevin Jaholdny, Byron Keemer, Mark Bender, Shirley  
23 Barnes, and Lorraine Britton.

24 MS. BRUTON: Hi. My name is Lorraine Bruton. I'm  
25 the Shop Steward. Oh, I work for First Transit. I work

1 for First Transit. I'm the Shop Steward at the Valley  
2 yard. And I'm with Teamster Local 572.

3 My main concern is safety. Our drivers are to be  
4 concentrating on safety of the passengers and the vehicle  
5 traffic. During the Democratic convention a driver  
6 didn't take his lunch. Police officer pulled him over  
7 and called -- and told him to call dispatch because --  
8 and tell them that I told you to -- tell them I pulled  
9 you over. That I'm not allowing you to continue in  
10 service because of your unsafe driving. You are to send  
11 two people, one to drive the bus back, and the other to  
12 drive the unit car.

13 The next day I asked the driver what happened. He  
14 said that he did not -- he got lightheaded and he did not  
15 have lunch. And he couldn't focus on the traffic. The  
16 police officer had told him that he was swaying back and  
17 forth in traffic. He also mentioned that he could have  
18 had a serious preventable accident if the police officer  
19 didn't pull him over.

20 Our company have scheduled over 100 employees with  
21 lunch breaks. We are open 7 days a week. Some of the  
22 driver work for 8 to 10 days. Before everyone had a  
23 lunch break, some of the drivers was -- would complain  
24 about their head aches at the end of the 8-hour shift.  
25 With the lunch breaks, the drivers -- with the lunch

1 breaks, drivers would no longer have headaches. They  
2 could better focus on the traffic, and less preventable  
3 accidents.

4 The company would not allow any driver to eat while  
5 driving. They will say unsafe because you are not  
6 focused on the traffic and the safety of passengers.

7 COMMISSIONER BRADSTREET: Thank you very much.

8 MR. BENDER: Good afternoon, folks. My name is Mark  
9 Bender. I'm an 18-year Staff Attorney at Bet Tzedek  
10 Legal Services. I'm also President of the Bet Tzedek  
11 Legal Services Union. And I want to say that during my  
12 18 years working at Bet Tzedek -- and we serve the poor  
13 of Los Angeles County, and that includes the working  
14 poor -- I've represented hundreds and hundreds of low  
15 income workers, janitorial, restaurant workers and  
16 sweatshop workers. And I want to tell you, for those  
17 workers that work typical shifts of 7:00 in the morning,  
18 7:30 in the morning 'til 5:00, 6:00, 7:00 at night, they  
19 are not getting lunch breaks. They are not getting rest  
20 breaks. They are, when they can, eating while working.

21 And the only way that the shops that they work in,  
22 all these workers, ever change their behavior is when one  
23 or two courageous workers gets to the Labor Commissioner  
24 and files a claim. And when they win that claim, and  
25 they typically do because these are violations, then the

1 shops change their behavior. They look to the Labor  
2 Commissioner to enforce the labor laws of California.

3 And I worry when I hear the code word today of  
4 flexibility, let's be flexible, that they're telling the  
5 Labor Commissioner to be flexible in enforcing  
6 California's laws. We are not telling other agencies in  
7 California to be flexible when imposing laws. Police  
8 officers are not flexible when you run a red light. We  
9 don't want the Labor Commission to be flexible in  
10 enforcing the minimum wages or overtime laws. And we're  
11 concerned when we hear these words flexibility and taking  
12 away workers' rights.

13 I've had folks talk to me when I've settled claims  
14 or when I talk to employers and say, if you're going to  
15 enforce these labor laws here in Los Angeles, then we're  
16 going to move the work out of California. And the only  
17 response is, well, we live in California and we expect  
18 California's labor laws to be enforced.

19 And, you know, the unspoken word here is that it's  
20 going to cost more money to afford these lunch breaks.  
21 Nobody says that, but we know it's true. And that's the  
22 cost of doing business in California. And the cost of  
23 doing business in California is to comply with  
24 California's labor laws. And we look to the Labor  
25 Commissioner to enforce those labor laws. And I thank



1 you.

2 COMMISSIONER BRADSTREET: Thank you very much, sir.

3 MR. JAHODDY: Thank you for the opportunity to speak  
4 today. My name is Kevin Jahoddy. I work for Producers  
5 Dairy Foods. I'm a Transport Manager there.

6 COMMISSIONER BRADSTREET: You work for who? I'm  
7 sorry, sir.

8 MR. JAHODDY: Producers Dairy Foods.

9 COMMISSIONER BRADSTREET: Thank you.

10 MR. JAHODDY: Uh-hmm. Basically, we drive about  
11 41 -- excuse me, 4 and a half million miles a year, so  
12 our drivers put a lot of time on the road. The shifts  
13 are basically 12 to 15 hours a day. We leave anywhere  
14 from 2:00 p.m. to 3:00, and so we're on the road when a  
15 lot of people are sleeping.

16 One of the issues that comes up, the number one  
17 issue for us would be safety, insuring that our drivers  
18 have the flexibility to choose when to sleep, when to  
19 rest, is critical for safety. Anyway, so a little  
20 frustrated there.

21 Anyway, the number two issue, parking a tractor-  
22 trailer in any city, it's not easy to even park a car.  
23 So it's a little bit frustrating to try to do that.

24 Number three issue is just administratively it's  
25 very difficult to -- you know, we've got 250 routes going

1 out a week. Just difficult to enforce and insure that  
2 everyone is taking their lunches at appropriate times.  
3 That's all I had.

4 COMMISSIONER BRADSTREET: Thank you.

5 MR. JAHODDY: Thank you.

6 COMMISSIONER BRADSTREET: Thank you very much.

7 MS. BARNES: Good morning, Commissioner. My name is  
8 Shirley Barnes. I am the Senior Vice President of Human  
9 Resources, and are here representing the St. Joseph  
10 Health System.

11 We really appreciate you giving us the opportunity  
12 to speak today and to talk about some of the challenges  
13 that we're faced with as employers in the state of  
14 California. While each industry has its own unique  
15 challenges, we feel we are somewhat unique in that we  
16 have a different -- we have alternative work schedules  
17 for our employees, which creates some difficulties.

18 It's not a real black-and-white issue. We deal with  
19 a lot of gray issue. And we deal with situations that  
20 can deteriorate very quickly, especially as we deal with  
21 patients.

22 I believe that there is a need for clarity. If we  
23 were to call three different legal firms in this room or  
24 across Southern California, we may get three different  
25 opinions as to how we should implement this.

1           COMMISSIONER BRADSTREET:  Has that been your  
2 experience?

3           MS. BARNES:  It has.  So I do really believe that  
4 there is a need for greater clarity.  In the hospital  
5 setting we also offer -- because we offer the alternative  
6 work schedules, we're -- it's an overwhelmingly negative  
7 response from our employees in terms of trying to  
8 schedule them within that first five hours.  They want to  
9 take their break within the middle of their shift.  It  
10 gives them -- it renews them in order to carry through  
11 the rest of their shift.  And so they're coming to us  
12 very frustrated, agitated.  We want to decide when we  
13 take our break.  We're professionals.  We make very  
14 important life-and-death decisions on a daily basis.  And  
15 we really feel that we can make that decision.  And we  
16 can determine when it's best to leave our patient in the  
17 care of someone else.

18           We are not opposed to the penalty.  We want to make  
19 sure that that is clear.  It is and should be applied in  
20 the appropriate circumstances.  We fully believe that  
21 employees' preference, however, should be a major factor  
22 when deciding on imposing a penalty.

23           We're working with tight schedules, shortages,  
24 fluctuating patient census, admits, discharges.  It's a  
25 constantly changing environment.  And as I said, the

1 patients can deteriorate very quickly.

2 We're not trying to take away something that is an  
3 inherent right to the employee. We're doing everything  
4 in our power to make sure that employees receive their  
5 breaks and their lunch periods. But they don't want to  
6 take them when we're scheduling them.

7 And as an organization, we are very focused on  
8 employee engagement and trying to derive satisfaction  
9 within our work environment. This is a major  
10 dissatisfier.

11 So, in closing, we respectfully ask that you make  
12 this a priority on your agenda in terms of resolving this  
13 issue, and bringing forth and recognizing that we have  
14 professionals who, in their judgment, can make the  
15 decision as to when they should and can take their  
16 rightful break, and offer greater flexibility in doing  
17 so. Thank you.

18 COMMISSIONER BRADSTREET: Thank you very much.

19 MR. KEMMER: Ladies and gentlemen, thank you. My  
20 name is Byron Kemmer. I work for Producers Dairy. I  
21 have here 65 letters signed by my co-drivers. I drive  
22 truck for Producers Dairy. My employer is more than  
23 willing to give us two breaks, three breaks, four breaks,  
24 three lunch breaks, whatever it takes to get that truck  
25 back safely.

1           The gentleman talks about flexibility. With this  
2 new law there is no flexibility. There needs to be some.  
3 We can't stop and park on the side of the road just  
4 because our lunch break is up, or there's an accident, or  
5 construction, so on and so forth. We get tickets for it.

6           The nearest truck stop out of the Bay Area is an  
7 hour and a half away. What are we supposed to do? Are  
8 you going to give us a free pass we can park on the side  
9 of the road?

10          We believe in safety. We have had no accidents,  
11 fatal accidents, in over 10 years. And it's our  
12 responsibility to keep our lunch breaks at our discretion  
13 when we need it.

14          I can't emphasize enough how many employees are  
15 behind this. We need the flexibility. We're not a  
16 sweatshop. We're a terrific organization with a terrific  
17 safety record. Let's keep it that way.

18          COMMISSIONER BRADSTREET: Okay. Thank you very  
19 much. If you could turn those in at the back? No,  
20 please, please, no applause. If you could turn those in  
21 at the back, sir, that would be great. Okay.

22          UNIDENTIFIED FEMALE: The next five speakers will be  
23 Kayla Brown, Eugene Ngu, Tony Jackson, Kurt Sholter, and  
24 Bruce Wick.

25          MR. BROWN: Hello. Good afternoon. My name is

1 Kayla Brown. I work for First Transit over 10 years.  
2 For the past few years we had the lunch break. We  
3 continue to have the lunch breaks. No problem with the  
4 lunch break. The company complies.

5 We're on a fixed route. Consists of eight to ten  
6 hours per day, with less than ten minutes at the end of  
7 the route. If we get to the end of the route and we have  
8 ten minutes, we don't -- back up. Excuse me.

9 If we get to the end of the route, we have ten  
10 minutes. If we arrive late and don't have that ten  
11 minutes, we have to turn back around with no recovery  
12 time. That may be considered as rest period, but it's  
13 not. It's recovery time. We have that ten minutes at  
14 the end of the route, we have to turn back around in the  
15 opposite direction and continue the route because we have  
16 timeframes on the route.

17 So anything, detours, police activity, anything that  
18 make the route delayed, we don't get that recovery time  
19 or rest period. So we have to continue on. Also, we  
20 have to change the information on the bus, turn around  
21 and go in the opposite direction.

22 That's why I think working class people should be  
23 able to take lunch breaks due to not getting the recovery  
24 time or rest period at the end of the route.

25 I really do think that the route should be -- excuse

1 me again. I really don't think it should be a  
2 negotiating issue between the company and the union. I  
3 think it should be the way that's in law now that's in  
4 effect.

5 Please think safety first, and let yourself think  
6 about that one of your loved ones may be on that public  
7 transportation bus that that driver did not have no rest  
8 or lunch period, and something happens on that bus.  
9 Please keep the same provision in effect, and please no  
10 flexibility. Thank you.

11 COMMISSIONER BRADSTREET: Thank you very much, sir.

12 MR. SLUETER: Hi.

13 COMMISSIONER BRADSTREET: Hi.

14 MR. SLUETER: I'm Kirk Slueter. I'm General Manager  
15 of Chili's at Huntington Beach. I'm joined today by Area  
16 Directors Jeff Press, Jim Hurst and Bill Dobner, and one  
17 of my peers in Eric Frank from Encino.

18 I also represent Brinker International Restaurant  
19 Brands in California. They include Magianno's Little  
20 Italy, On the Border Mexican Grill and Cantina, and  
21 Macaroni Grill. We employ over 12,000 California  
22 workers.

23 Madam Commissioner, I would like to welcome you to  
24 your new role, and I'd thank you for taking the time to  
25 hear our testimony.

1           The current meal period rules may force restaurant  
2 employees to work longer for less money. Current meal  
3 period rules prohibit employees from working more than  
4 five hours without a meal period. This often results in  
5 employees taking their meal period when the restaurant is  
6 busiest, and when they're generally making the most tips.  
7 These regulations, therefore, only serve to increase the  
8 length of the shifts, and create a period of dead time  
9 that generates no tips. Many of my employees would  
10 rather have the option to decide for themselves whether  
11 to waive the meal break or not.

12           As you know, restaurant-tipped employees depend  
13 greatly upon their tips. Since meal breaks are often  
14 during the busiest time of the day, customers may not  
15 have the same server throughout their dining experience.  
16 This can also have an adverse effect on the tips.

17           An enforce all meal periods interpretation will have  
18 an adverse effect on the workplace and the workforce. We  
19 believe that the law clearly requires employers to  
20 provide employees with the opportunity for a meal break.  
21 This stated, we are aware that others contend that the  
22 law requires employers to enforce meal breaks, and  
23 basically force employees to take their full 30-minute  
24 meal break and to police their compliance.

25           If they don't, employers face potential liability.



1 Under this enforce all meal periods interpretation of the  
2 law which we believe is wrong and unfair. If an employee  
3 clocks in from a meal break even one minute early,  
4 employers could face liability.

5 An enforce all meal periods interpretation, which we  
6 oppose, would result in employers having to take extreme  
7 and unfair actions to avoid the potential threat of a  
8 lawsuit, like firing employees for clocking in early, or  
9 not scheduling shifts that are longer than five hours.  
10 Once again, this can negatively affect the employee's  
11 ability to make money.

12 The enforce all meal periods interpretations, one,  
13 promote gaming the system by dishonest employees who  
14 purposely start their shifts early or end them early.  
15 They also lead to shakedown lawsuits. And three, punish  
16 good businesses that provide breaks that may be a minute  
17 early or a minute late.

18 Lawyers are preying on former or current employees  
19 and encouraging these types of lawsuits. For example,  
20 there is a recent Craig's List add by a plaintiffs'  
21 attorney soliciting any restaurant employee who has  
22 worked in California in the last four years and who has  
23 missed rest or lunch breaks.

24 Adopting an enforce all meal periods interpretation  
25 will only force restaurants to impose harsher protective

1 policies, which ultimately punish those employees who  
2 just want to work, earn their tips, and get on with doing  
3 the other things in life that are important. Thank you  
4 for taking the time to listen.

5 COMMISSIONER BRADSTREET: Thank you. Thanks for  
6 being here.

7 MR. JACKSON: Good afternoon.

8 COMMISSIONER BRADSTREET: Good afternoon.

9 MR. JACKSON: My name is Tony Jackson, and I'm with  
10 Methodist Hospital of Southern California representing  
11 over 2,000 employees in the administration of the  
12 hospital.

13 We're here today because we feel we need flexibility  
14 in the law. Our employees are very dissatisfied with the  
15 fact that we tell them when to go to break, when to go to  
16 lunch.

17 As you've heard previously from my nursing  
18 counterparts, it is very difficult to plan breaks for our  
19 staff. This doesn't only include our nursing staff, but  
20 this includes also housekeeping, our professional staff  
21 pharmacy, respiratory, rehab services.

22 We have the same issues. We take care of patients.  
23 Patients don't get sick on a time clock. And we want to  
24 take care of them when they need us, not when the  
25 schedule says it's time to take care of them.

1           For that, we're asking for some relief in  
2 flexibility. Our employer, which is Methodist Hospital,  
3 provides on-campus nursing -- I mean on-campus care for  
4 infants all the way up to preschool. Many of our nurses  
5 and other staff members take advantage of that school.

6           One of the biggest complaints we've had since the  
7 enforcement of this law has been the inability to plan  
8 their day around the day that coincides with their  
9 children. We have nursing mothers who ask me, pleaded  
10 that I bring forth the fact that they cannot schedule  
11 their bonding periods because we say when they have to  
12 take their breaks, when they have to take their meal  
13 periods. These are times when they could easily work  
14 with their counterparts to cover their patients in order  
15 to schedule their time to be prepared with their kid.

16           For that we ask for flexibility. And we hope that  
17 you will make this a priority and consider seriously the  
18 ramifications of this law on the healthcare industry.  
19 Thank you.

20           COMMISSIONER BRADSTREET: Thank you very much.

21           MR. WICK: Welcome.

22           COMMISSIONER BRADSTREET: Thank you.

23           MR. WICK: And thanks for this public forum. My  
24 name is Bruce Wick. I'm Risk Manager for CalPASC, an  
25 association of specialty contractors in the state. And

1 we certainly as good employers support the intent of this  
2 law. We support strongly the enforcement of it  
3 consistent.

4 The EEEEC program, for one, is a great program. And  
5 we think that could be even done better to root out the  
6 employers who really cause some of the problems that  
7 people have talked about today. Not giving any kind of  
8 ability for employees to take their breaks.

9 In construction, I'll just reiterate, we have some  
10 of the logistical and safety issues. In the middle of a  
11 concrete pour, you just can't stop and take a break. So  
12 you try and schedule around that. That is one issue.

13 And I will just say, one of the frustrations I'm  
14 getting, again, from good employers and their human  
15 resources directors, they used to be able to take an  
16 employee request because of some family or like issue,  
17 and the employee wanted some flexibility, and they could  
18 try and go the extra mile and make that work. And what  
19 they're saying today is they're too afraid with the  
20 premium penalties to even try. And as we've heard, some  
21 employers are sort of going to the point of having to  
22 discipline employees. And it's just such a different  
23 place than they used to be.

24 We know bad employers have to be hit in order for  
25 them to comply. But how can good employers take better

1 care of their employees in a more flexible way? I'd like  
2 you to consider that. Thank you.

3 COMMISSIONER BRADSTREET: Thank you very much.

4 UNIDENTIFIED FEMALE: Eugene? The next five  
5 speakers will be Michael Parker, Robert Mosely, Terry  
6 Klutsky, Danielle Luchido, and Rick Hendrix.

7 COMMISSIONER BRADSTREET: Go ahead.

8 MS. PARKER: My name is Michael Parker. And I have  
9 worked as a writer and producer in the field of  
10 entertainment. I'm asking you not to change the current  
11 law. Currently I and nine other people have files --  
12 have logged claims with the DLSE for the show that I'm  
13 going to -- about to share with you.

14 On Outback Jack we worked 21 days straight in the  
15 field, 18 to 20 hours a day, in temperatures exceeding  
16 100 degrees, with no coverage whatsoever provided to us.  
17 We would move between 3 and 5 locations per day. And at  
18 times without adequate water, let alone a meal break.  
19 The mentality of the industry is all about the bottom  
20 line and how much money they can save.

21 While we were in the field there were some incidents  
22 that occurred. Due to dehydration and lack of adequate  
23 food, one of the cast members fainted. Not only were we  
24 required to shooting the incident, we were asked to dig  
25 cups from the trash in order to get water to the cast,

1 who were dehydrated.

2 The day we moved five locations, we went from 4:30  
3 a.m. to 6:00 p.m. -- to 6 o'clock without a meal break.  
4 And as cast were also being attended to by a said doctor,  
5 we were given direction by the director of photography  
6 and the executive producer to take them away from the  
7 doctor, get them back on the set, because they were  
8 losing light and needed to get the shot.

9 Are there companies that would abide by flexibility?  
10 Yes, of course there are. But the law is not in place  
11 for these companies. The law is in place for those  
12 companies that consistently violate and disregard humane  
13 working conditions, which includes meal breaks. Thank  
14 you.

15 COMMISSIONER BRADSTREET: Thank you very much.

16 MR. KLINSKY: Good afternoon. My name is Terry  
17 Klinsky. I'm a trucker with a company called Dalton  
18 Trucking in Fontana, California. And I'm here this  
19 afternoon to speak on behalf of professional truck  
20 drivers, and ask for some flexibility in the way the law  
21 is interpreted in connection with professional truck  
22 drivers.

23 First, we haven't talked much about a lot of their  
24 shifts. But at Dalton, most of us start work from 2:00  
25 to 5:00 in the morning. A lot of us want to eat

1 breakfast from 5:00 to 7:00 in the morning, and then not  
2 eat lunch again 'til noon or 1:00 in the afternoon.  
3 That's more than five hours later.

4 We have an opportunity to stop and have coffee or  
5 eat a sandwich while we're waiting to load or unload  
6 during the middle of the day for our break. But the idea  
7 that the law requires us to eat within five hours creates  
8 nothing but strife between us and the human resources  
9 people.

10 Second, I want to make the point that, as it relates  
11 to professional truck drivers, folks that are legal to  
12 drive, have a license, have a physical. All you have to  
13 do is look in the Sunday newspaper and you'll see at  
14 least 50 ads for drivers like that. So if there's any  
15 employer out there that is dumb enough not to treat  
16 drivers the way they ought to be treated, they can walk  
17 away and have another job that day.

18 There's even magazines called Driver Wanted listing  
19 ads for drivers. There's a huge industry shortage when  
20 it comes to drivers. So drivers don't need the  
21 protections that a lot of the folks that are working in  
22 restaurants and sweatshops that we've heard this morning.

23 The other point that I'd like to make is that there  
24 isn't -- at Dalton, and I'm sure it's with many  
25 employers, you can take longer than a half hour. We've

1 heard lots of comments about, well, I only get 20  
2 minutes. At Dalton management doesn't care if you take  
3 an hour for lunch. All you have to do is get your work  
4 done by the end of the day. Thank you.

5 COMMISSIONER BRADSTREET: Thank you very much.

6 MR. MOSELEY: Good afternoon, Commission Bradstreet,  
7 Mrs. Watkins and Mr. Alvarez. My name is Robert Moseley.  
8 I'm the Director of Operations for a company called  
9 Dynamics. We're a same-day on demand delivery company.

10 One of the competencies that our customers demand is  
11 our ability to work within the changing framework of  
12 their businesses. They need us to be flexible with  
13 pickup and delivery times to meet the needs of the end  
14 customer. We've been able to create opportunities for  
15 our employees because of this ability.

16 We need flexibility to work with our employees'  
17 personal schedules and run our business. The requirement  
18 that meals must be taken before the fifth hour infringes  
19 on our employees' schedules and their ability to manage  
20 childcare, school conferences, doctor visits, and other  
21 personal responsibilities, as well as their work  
22 requirements.

23 We work with trucking companies that will be hard  
24 pressed if drivers have to pull over in the middle of a  
25 job and shut for meal breaks. With the traffic



1 congestion we encounter in California, it is difficult to  
2 estimate travel time. And what is sufficient time to  
3 make a run on one day may be insufficient on the next  
4 day. Setting a specific requirement for the time of the  
5 meal break will impact business productivity and  
6 efficiency.

7 As we manage the current rule with our employees, we  
8 are challenged by the current regulation in two specific  
9 ways:

10 One, when an employee needs to leave work early and  
11 is required to take a meal break because they've worked  
12 five hours;

13 And two, how do we enforce this rule when an  
14 employee takes their meal after working five hours? Is  
15 it fair to discipline an employee who wants to complete a  
16 specific task, or work with a specific customer, and  
17 starts their meal a few minutes past a rigid time  
18 constraint?

19 We all agree that meal and rest periods are  
20 necessary for health and safety, and we want and require  
21 our employees to take their meal breaks. We urge you to  
22 allow more flexibility to the meal and rest period  
23 regulations for employers and employees. Thank you.

24 COMMISSIONER BRADSTREET: Thank you.

25 MS. LUCHITO: Good afternoon. My name is Danielle

1 Luchito. And I'm here to testify on behalf of Work Safe,  
2 the coalition of low wage immigrant worker advocates and  
3 all workers in California. I testified in Sacramento as  
4 well. And I thank you --

5 COMMISSIONER BRADSTREET: Yeah, I thought you did.

6 MS. LUCHITO: Yeah.

7 COMMISSIONER BRADSTREET: So you've come down for  
8 this as well? Wow.

9 MS. LUCHITO: I have.

10 COMMISSIONER BRADSTREET: Good for you.

11 MS. LUCHITO: Thank you for this second opportunity  
12 to talk. My testimony today will provide you with  
13 additional information --

14 COMMISSIONER BRADSTREET: Okay.

15 MS. LUCHITO: -- about why the present meal and rest  
16 break protections should remain unchanged.

17 So Work Safe is a California-based nonprofit  
18 organization dedicated to promoting health and safety  
19 through training advocacy and education. We're  
20 testifying today also in support of a number of legal  
21 services programs who are here representing low wage and  
22 immigrant workers.

23 Research shows that workers who take breaks are less  
24 likely to sustain injuries on the job. This is true for  
25 workers in all industries. Workers who use computers

1 frequently experience musculoskeletal discomfort with an  
2 incidence rate as high as 50 percent.

3 Ten different studies conducted between 1984 and  
4 2003 confirm the effectiveness of rest breaks in reducing  
5 musculoskeletal discomfort in computer tasks.

6 Musculoskeletal injuries are costly to workers and to  
7 employers.

8 According to a recent report by the Bureau of Labor  
9 Statistics, which lists the leading injuries and  
10 illnesses that resulted in days away from work in 2005,  
11 workers injured with carpal tunnel syndrome, which is a  
12 type of musculoskeletal injury, spent a median of 27 days  
13 away from work, the highest median of days away from work  
14 that year. That report also reveals that repetitive  
15 motion, such as typing and scanning groceries, was the  
16 event that resulted in the longest absences from work in  
17 2005.

18 These days away from work result in lost income to  
19 workers and employers. And in addition to the direct  
20 cost of lost productivity and the cost of replacing  
21 workers temporarily and permanently injured by repetitive  
22 stress, repetitive stress injuries burden the Workers'  
23 Compensation system. For policy year 2004 repetitive  
24 stress injuries resulting in permanent disability cost  
25 California's Workers' Compensation system over

1 \$68 million.

2 In some workplaces breaks are necessary not only to  
3 reduce injuries to workers and costs to employers, but  
4 also injuries and costs to the public. Many extremely  
5 dangerous jobs involve shift work. For example, many of  
6 the refinery jobs in California involve shift work.  
7 These jobs require long hours at night when the risk of  
8 falling asleep is high.

9 Regular breaks are essential in minimizing these  
10 risks. Studies show that breaks not only reduce injuries  
11 and costs associated with injuries, they also increase  
12 productivity.

13 A 2003 study performed in the UK studied factory  
14 workers at a car assembly plant over three years. The  
15 authors of the study concluded that the frequency of --  
16 that increasing the frequency of rest periods for factory  
17 workers who operated the machinery substantially reduced  
18 their risk of industrial accidents and increased  
19 productivity.

20 Similarly, several studies of workers who spend  
21 their workday typing show that brief rest periods improve  
22 work performance.

23 In sum, there's strong evidence that the reduction  
24 of meal and rest break protections may both reduce  
25 productivity and increase Workers' Compensation costs.

1 Equally important, it would also lead to a loss of wages  
2 and livelihood for injured employees. Thank you.

3 COMMISSIONER BRADSTREET: Thank you very much.

4 UNIDENTIFIED FEMALE: Rick Hendrix? The next five  
5 speakers will be Bill Walton, Paul Solich, Kathleen  
6 Hartman, Jamie Bellanuba, and Jillian Broyles.

7 COMMISSIONER BRADSTREET: I think we'll hear from  
8 these speakers, and then we will take literally a five-  
9 minute break only, and then go straight through 'til two  
10 o'clock. So -- and I will have to hold people to their  
11 times to make sure that we try and get in as many people.  
12 Okay? Great.

13 MR. WALTON: Okay. Good afternoon. And  
14 congratulations.

15 COMMISSIONER BRADSTREET: Thank you.

16 MR. WALTON: I'm Bill Walton. I'm the Plant Manager  
17 of one of the two Metal Container plants located up in  
18 Riverside County. And Metal Container is a wholly owned  
19 subsidiary of Anheuser Busch. We're part of the Anheuser  
20 Busch packaging group. And we have two plants up there.  
21 One's a can plant that I'm the Plant Manager of in Mira  
22 Loma, and the other is a lid plant that is in Riverside.  
23 I represent the Metal Container can plant.

24 And what I'm here to talk about today is a little  
25 bit about our situation is very different than a lot of

1 what you've heard today. We are a continuous operation  
2 in both of these plants. We work 24 hours a day, 7 days  
3 a week. And we do that because volume in our business is  
4 very leveraging. And we try to keep the costs per unit  
5 down by making a lot of those units.

6 When we started up both of those plants, we started  
7 up with a schedule that was 12-hour shifts, 4 days on, 3  
8 days off, 3 days on, 4 days off. And our employees love  
9 these shifts. And it benefits them in many different  
10 ways. Number one, they're not on the road five or six  
11 days a week going to work. So from a traffic standpoint  
12 it helps out.

13 There's a built-in compensation. We pay time and a  
14 half after eight hours. If they happen to only work one  
15 day that week, they actually get four hours of built-in  
16 overtime. So they love the schedule.

17 With this meal change, what we've had to do with the  
18 schedule -- because we can't afford to have all of our  
19 employees leave the floor at one time in order to get  
20 their lunch period in before that fifth hour. So what we  
21 have to do is we have to relieve on breaks, and you get  
22 certain people going at certain times.

23 In order to get all these breaks done, we have to  
24 start that meal period by nine o'clock in the morning.  
25 And obviously, our employees, this is a big dissatisfier

1 for them.

2 Now, we -- I've heard a lot of the stories about  
3 some of the sweatshops and all of that. That is not who  
4 Anheuser Busch is. And I think everybody recognizes  
5 that. And we've actually tried to accommodate our  
6 employees by giving them another extended break period  
7 during the lunchtime, around 12:00 noon, that would  
8 actually help them get their lunch in at a proper time.  
9 And we are talking about flexibility here.

10 For us it's a big dissastisfier with the hourly  
11 employees. It's a big dissatisfier with my managers  
12 having to monitor the break and insure everybody gets it  
13 in.

14 So what we're asking for today is not to do away  
15 with required breaks. We all understand we have to have  
16 those. All we're looking for is a little bit of  
17 flexibility as far as when we can take those breaks and  
18 when we can have them scheduled. Thank you.

19 COMMISSIONER BRADSTREET: Thank you very much.

20 MS. HARTMAN: My name is Kathleen Hartman. I'm an  
21 Attorney with Callahan, McCune and Willis. And I also  
22 represent the Bryad Group, which operates restaurants in  
23 California. And I'm also doing employment law for other  
24 businesses.

25 I'm not going to rehash everything. I appreciate

1 the opportunity to speak with you. Because if you are  
2 considering fashioning a regulation, I think it's  
3 important to know some of what we in the trenches have to  
4 deal with every day.

5 Some of these things are -- and these are actual  
6 litigated issues. Not necessary with the DLSE, but in  
7 court. And employee goes out, takes a smoke break, is  
8 standing out there smoking with their manager, comes back  
9 in, and later on sues and says, well, you didn't relieve  
10 me of all my duties for my 10-minute rest break because  
11 there was no official transfer of the job duties. So the  
12 law is somewhat unclear.

13 I mean certainly the employer thinks that the person  
14 has taken a 10-minute rest break. But now we're in  
15 litigation and always -- the litigation is always  
16 uncertain. We can feel our position is righteous, but we  
17 could certainly lose. So what is an employer to do?  
18 Those sorts of -- those are abuses that we see with the  
19 current regulations.

20 Also, other abuses are -- and this is very  
21 particular to the restaurant industry and those  
22 industries that have tips. There is an extreme  
23 motivation for employees not to take a meal break, not to  
24 be gone from their tables for 30 minutes. And they will  
25 hide from taking their meal breaks. And they are



1 disincentive to do it. And I have spoken with them, and  
2 they say, I don't want somebody else to take over my  
3 tables. It will affect my tip.

4 And it's not that the employer isn't trying to  
5 schedule the meal breaks and rest breaks. It's that  
6 there is resistance.

7 And we talk about flexibility, in some respects I  
8 see it as a freedom of choice. Employment doesn't have  
9 to be adversarial. It can be something where two people  
10 get together and they talk and they decide, you know,  
11 this is how I would like my work shift to be organized.

12 And just one other little comment that happens, you  
13 know, that I've experienced is I've had a restaurant who  
14 has worked in agreement with an employee. The employee  
15 came to them and said, hey, I'm going to school. I need  
16 my job to work with my school schedule. Can I put my  
17 meal period at the end? Single, one restaurant person,  
18 single --

19 (End of cassette two, side B; continuing  
20 on cassette three, side A.)

21 COMMISSIONER BRADSTREET: And so if we don't get to  
22 everyone, we ask that you please submit written comments.  
23 But we're going to do our best. And in that regard,  
24 we're going to have to shorten the time to two minutes  
25 from two and a half minutes. So it will be two minutes.

1 Okay.

2 UNIDENTIFIED FEMALE: Okay. The next five speakers  
3 are Rich Limebach, Simon Herrera, Fara Chappell, Kelly  
4 Herrit, and Mark Therkoff.

5 MR. LIMEBACH: Thank you, Commissioner. My name is  
6 Rich Limebach. I'm a Director of Safety Services and  
7 Training for the California Trucking Association.

8 COMMISSIONER BRADSTREET: Hi.

9 MR. LIMEBACH: And in my daily work I primarily deal  
10 with drivers and I deal with companies on regulatory  
11 issues. Several concerns that we have, again, is  
12 flexibility in our industry. I hope everybody starts to  
13 understand our industry and how flexible it has to be.

14 We have traffic issues. This morning I drove from  
15 Ontario here. Took me two and a half hours. If I was  
16 driving a 65-foot vehicle, I had no place to stop for a  
17 break. We have limitations on roads. We are constantly  
18 and consistently kept off of roads. We can't park on any  
19 off ramps. We can't park on any public streets. We  
20 can't park in different areas to take these breaks. So  
21 logistically it's almost impossible for us to take a  
22 break every two hours.

23 We also have hazmat drivers, livestock drivers under  
24 certain circumstances that cannot leave their loads.  
25 They have to stay with their loads consistently, so they

1 can't leave. And they may have break or their lunchtime  
2 sitting watching their loads, or whatever, so it's like  
3 an on duty.

4 We're also limited in the hours of service that we  
5 can operate each and every day. And our drivers often  
6 run out of hours before they can if they have to stop and  
7 take a complete half hour or whatever without being  
8 flexible.

9 So many industries we understand that this is  
10 needed. But we need the flexibility in our industry to  
11 be able to have our drivers determine when they take  
12 these stops. They're required by law if they're fatigued  
13 to stop. Required by law. By Federal Motor Carriers and  
14 also the California Highway Patrol and Title 13 and Hours  
15 of Service Rules. If they are fatigued, they are to  
16 stop.

17 Anyway, one last statement. We have -- if you were  
18 to drive from San Francisco to Reno, the logistics are  
19 almost impossible to take very many breaks because we  
20 have one truck stop and one rest stop that's almost in  
21 Reno. Eighteen rest stops have been closed in the last  
22 five years by the Caltrans, and there's no place for our  
23 trucks to stop. Thank you, Commissioner.

24 COMMISSIONER BRADSTREET: Thank you very much.  
25 Thanks for being here. Yes, sir.

1 MR. CHAPPELL: Well, good afternoon, Commissioner.  
2 My name is Fara Chappell. I am a Division Manager of a  
3 public transportation company in Chula Vista, and here  
4 representing over 500 drivers in the San Diego area. Our  
5 concern is the same that we've heard throughout the  
6 transit industry, the flexibility to negotiate with the  
7 unions for when they take a lunch break.

8 Earlier today there was a gentleman that spoke who  
9 said there's some confusion or something ambiguous about  
10 the law in wage order nine. Our operators don't have  
11 that problem. They simply want to be treated fairly,  
12 just like a government transit operator. They want the  
13 same rights as they have.

14 COMMISSIONER BRADSTREET: Okay.

15 MR. CHAPPELL: Thank you.

16 COMMISSIONER BRADSTREET: Thank you very much for  
17 being here.

18 MR. CHAPPELL: Thank you.

19 COMMISSIONER BRADSTREET: Yes, sir.

20 MR. THERKOFF: Good morning.

21 COMMISSIONER BRADSTREET: Good morning.

22 MR. THERKOFF: My name is --

23 COMMISSIONER BRADSTREET: Afternoon.

24 MR. THERKOFF: My name is Mark Therkoff. My  
25 co-driver here, Terry Crise. We're here on behalf of the

1 Local 386 in Modesto. We're Teamsters. We're drivers in  
2 the transportation industry. And I've listened to a lot  
3 of good men and women testify here today, and it's  
4 obvious that the Department of Labor needs to step in and  
5 enforce the break laws.

6 But as professional and -- being a professional  
7 driver in the transportation industry, we need the  
8 flexibility and the ability to decide when to take our  
9 breaks. Because if we follow your law, madam, that means  
10 that I have to pull over, and I have no access to food.  
11 I have no access to restrooms because I'm required to  
12 take that break during a certain time period. That's why  
13 you must reconsider the law and change it to fit the  
14 transportation needs. And I appreciate the ability to  
15 come here and explain that to you. Thank you very much.

16 COMMISSIONER BRADSTREET: Thank you. I appreciate  
17 you coming. Okay. Please try to refrain from applause.  
18 Thank you. Yes.

19 MR. HERRERA: Good afternoon, Commissioner.

20 COMMISSIONER BRADSTREET: Good afternoon.

21 MR. HERRERA: My name is Simon Herrera from Victor  
22 Valley. I represent Veolia Transportation. You heard a  
23 lot today, so I --

24 COMMISSIONER BRADSTREET: I'm sorry. What was your  
25 name, sir?

1 MR. HERRERA: Simon Herrera.

2 COMMISSIONER BRADSTREET: Simon Herrera. Okay. And  
3 you are from where? I'm so sorry.

4 MR. HERRERA: Veolia Transportation.

5 COMMISSIONER BRADSTREET: Got it. Okay.

6 MR. HERRERA: You heard a lot today, so I'll leave  
7 it at this. Please give us the opportunity to negotiate  
8 the lunches with the union. Thank you.

9 COMMISSIONER BRADSTREET: Thank you very much.

10 UNIDENTIFIED FEMALE: Kelly Herrit? The next five  
11 speakers will be Ted Galloway, Art Thompson, Richard  
12 Limebach, Valerie Leese, and Judson Augustine.

13 MR. GALLOWAY: Good afternoon. My name is Ted  
14 Galloway. I'm the Vice President of State Employees  
15 Trade Council United. We represent skilled craft  
16 workers, electricians, plumbers, et cetera, at 23  
17 California state universities, UCLA and UC San Diego.

18 We support the current law. We feel that we already  
19 have the flexibility at this time to make by mutual  
20 agreement our changes in our day. And have the  
21 availability to take our breaks and lunches, once again,  
22 by mutual agreement throughout the day. So, once again,  
23 we support the current law. And I thank you for your  
24 time.

25 COMMISSIONER BRADSTREET: Sorry, sir. Did you say

1 you have agreements?

2 MR. GALLOWAY: We have the flexibility to move our  
3 break times and lunch periods where it coexists with the  
4 work that we're involved in. All too often electricians,  
5 plumbers, et cetera, we're not going to drop everything  
6 in the middle of what we're doing to take that break or  
7 take that lunch.

8 On the other hand, with that flexibility you have  
9 the ability to get out of the sun. As you may or may not  
10 know, trades workers, we definitely work out in the  
11 elements. So, therefore, our employers are definitely  
12 flexible. Anyway, thank you.

13 COMMISSIONER BRADSTREET: Thank you very much.

14 MR. AUGUSTINE: Good afternoon. My name is Justin  
15 Augustine. I'm Regional Vice President with Veolia  
16 Transportation Services, Inc. I'd like to say thank you  
17 very much for allowing this opportunity to speak to you  
18 this morning. And I know it's been a long morning for  
19 you, so I'll be brief.

20 COMMISSIONER BRADSTREET: Thank you.

21 MR. AUGUSTINE: One of the interesting things I'd  
22 like to point out to you is simply this: We support  
23 flexibility. We work with just about every labor union  
24 in the state of California. We employ over 14,000  
25 employees in the state. And the constant cry that I hear

1 from my employees is why are we not having the same  
2 opportunity to negotiate with our labor unions as the  
3 public sector employee has.

4 My employees do the exact same thing. They look the  
5 same. They're trained exactly the same way. We drive  
6 the same vehicles. We serve the same cities in which we  
7 all operate within. But yet, the public sector has the  
8 ability to negotiate with their unions, and the private  
9 sector doesn't have that same flexibility. And that's  
10 what we're asking for. Thank you very much.

11 COMMISSIONER BRADSTREET: Thank you very much.

12 MR. THOMPSON: Good afternoon. My name is Art  
13 Thompson. We're Thompson Tank Lines in Coastland,  
14 California. We are a fire carrier. We haul dry bulk  
15 powder cement. We also haul the liquid black asphalt  
16 that is used for paving. So everything we do is  
17 (unintelligible).

18 There are many variables in our operation. The fact  
19 that we load these cement at these cement plants where we  
20 can have breakdowns of any kind with some of the mill  
21 product. We have the same problem with the refineries.  
22 Maybe the oil is too hot, the oil is too cold, or the oil  
23 is not ready for us to load yet because they had to blend  
24 the oil.

25 We try to follow all the rules as much as we can.



1 And most of the time we can cover all of the rules with  
2 no problem. However, even with our laws that cover our  
3 hours of service, there is flexibility. If we have a  
4 problem with inclement weather, or various things that  
5 can happen on the highway, we can go over the hours. But  
6 we have to have a reason for it.

7 Just this past couple of weeks we've been tied up in  
8 two different fires, one on Cajon Pass where we had  
9 trucks tied up for three hours. In the San Diego area we  
10 were tied up for an hour and a half on some of those.  
11 And also, you've heard time and time again about the  
12 congestion of the highways, the wrecks that we have on  
13 the highways. And any time -- any given time we can be  
14 tied up three to four hours.

15 So my -- when I hire a driver, I tell my driver, you  
16 work at your speed. Don't let anybody tell you to rush.  
17 Follow all the rules and regulations of the highway, the  
18 speed limit, so forth. And each and every time you get a  
19 chance, because you may not know when your next meal's  
20 going to come. So because of all these variables, we do  
21 need some flexibility at this time.

22 COMMISSIONER BRADSTREET: Thank you, sir.

23 MS. LEESE: Hi. I'm Valerie Leese. I'm the  
24 President of Jack Jones Trucking in Ontario. We're a  
25 family-owned company. We deal with truckload lists and

1 truckload and we have -- we also handle hazardous  
2 material. And that is one of the issues that I'm really  
3 concerned about. With the traffic in this area, there  
4 are a lot of places my drivers cannot be. He's got to  
5 stay with his truck. There is no place for them to park.  
6 Even when there are fast food restaurants, anything like  
7 that, sometimes they're in shopping centers, my driver  
8 gets asked to move his truck because it's interfering  
9 with the rest of the people in the parking lot.

10 There's no place for these drivers. A lot of city  
11 roads are posted you can't have trucks on them. There's  
12 no truck parking. Like they said before, Caltrans has  
13 closed rest stops. We're working with the County of  
14 San Bernardino and Riverside and Supervisor Jose Gonzalez  
15 requesting that maybe we can have truck parking under the  
16 high tension lines, somewhere for our drivers. The truck  
17 stops in Ontario, they're usually filled up by two  
18 o'clock. There's just no place for our drivers anymore.  
19 So we would like the flexibility. Thank you.

20 COMMISSIONER BRADSTREET: Thank you very much.  
21 Thanks for being here.

22 UNIDENTIFIED FEMALE: Richard Limebach? The next  
23 five speakers will be Tory Favorote, Mark Smith, Carmen  
24 Hayes-Walker, Jessie Ramos, and William Moore.

25 MR. FAVOROTE: Good afternoon. My name is Tory

1 Favorote and I represent employers in a variety of wage  
2 and hour matters. But here today I'm specifically  
3 speaking on behalf of one client, Veolia Transportation.

4 As an attorney, it's very difficult when clients ask  
5 you questions that you simply can't answer. It's very  
6 frustrating. And in regards to wage order number nine,  
7 which controls Veolia's operations, I get several  
8 questions that I just simply can't answer because of gray  
9 areas of the law, as I put it to the clients.

10 For example, what exactly is a work period? Does a  
11 work period begin where the employee starts work for the  
12 day and ends when he or she begins their meal period, or  
13 does it end at the end of the day? What about on-duty  
14 meal period agreements? When can we use them, when can't  
15 we use them?

16 Sometimes I found myself calling various divisions  
17 of the DLSE, the LA office, the San Bernardino office,  
18 the San Diego office, to try to get an opinion. And as  
19 you call the various offices, you'll see that you get a  
20 different opinion from each office. There's no  
21 uniformity in the assessment of, you know, presenting the  
22 same facts. And you get the same answer from the various  
23 divisions.

24 Another similar problem that I have and a question  
25 that I can't answer for my clients is this: Why do

1 public sector employers under section 11(f) and 12(c)  
2 that have a Collective Bargaining Agreement specifically  
3 have a carve out from meal/rest break provisions and they  
4 don't because they're in the private sector providing the  
5 same exact service, same employees in the same thing, and  
6 unions representing both sides on the issue.

7       It's very difficult for them to grasp around the  
8 issue why the IWC would have the foresight to see that  
9 you would need -- the foresight to see that the  
10 transportation industry needs flexibility for the public  
11 sector and not give that same flexibility to the private  
12 sector for employees who are doing the exact same thing.

13       I mean, really, these drivers, they provide the  
14 backbone to our commerce. People depend upon them to get  
15 to work on time. Kids depend upon them to get to school  
16 on time so that they could learn. The elderly depend  
17 upon them so they can get to doctors' appointments.

18       It puts the drivers in a very precarious situation  
19 where they have a strict rule where they have to have  
20 their lunch by five hours to say, hey, I have to pull to  
21 the side. I'm sorry. You'll have to catch the next bus.  
22 I know that you're going to be late to school. I'm  
23 sorry, son, that you can't get to school on time. I'm  
24 sorry, ma'am, I know that you have an appointment and  
25 that you're going to be late. But the law is the law and

1 we have to follow the law.

2 We just ask that there be some flexibility, not in  
3 the enforcement of the law, but just in the law, to  
4 accommodate the realities of the world. Thanks.

5 COMMISSIONER BRADSTREET: Thank you very much.

6 MS. HAYES-WALKER: Good afternoon. My name is  
7 Carmen Hayes-Walker. I'm a 28-year employee with the  
8 City of Los Angeles. I also represent -- I'm on the  
9 Executive Board for Local 390, AFSCME, and we represent  
10 6,000 clerical employees for the City of Los Angeles.  
11 That includes the 911 operators, the 311 operators, and  
12 all the employees that serve the public counter.

13 In my 28 years I've seen our city services change.  
14 The clerical employees are no longer sitting in the back  
15 with a in-and-out box. You get something, a piece of  
16 paper in, you type it, you put it in the out box. That  
17 doesn't happen anymore.

18 We have been put in the front and we are working the  
19 public counters. We're talking all the incoming phone  
20 calls. No matter what you get, you get a public city  
21 employee in the clerical section.

22 I don't know about you, but if I dial 911, I want  
23 that person to be rested. I want her to be able to be  
24 alert and to be able to communicate with those officers  
25 exactly what my emergency is, and to be able to get me

1 some help as soon as possible. These employees handle  
2 thousands of calls. Those calls never stop while they're  
3 plugged in.

4 Just recently they have been assigned to take the  
5 911 calls from the cell phones. So if you're in this  
6 room, somebody is choking, you would get one of my  
7 members that answer that phone call. And you need that  
8 person to be alert and to be able to help you calmly and  
9 effectively to get some help here.

10 The fire service is the same thing. Those employees  
11 need to be able to help you in an emergency.

12 Under the last administration, Mayor Hahn had an  
13 idea called one call to city hall. So you call 311 and  
14 you're getting a person that will give you any city  
15 service in the city of Los Angeles. Those are my  
16 members. They need to be alert and be able to get the  
17 questions out of you and help you.

18 I work a public counter myself here in Van Nuys. I  
19 service 1,000 to 1,500 people a day. And I need to be  
20 able to get that person to tell me what they want and get  
21 them to the right place. I need my break and my lunch  
22 every couple of hours to be able to address these people  
23 and talk to them effectively. Okay? Thank you.

24 COMMISSIONER BRADSTREET: Thank you. Thank you.

25 MR. MOORE: Hi. My name is William Moore. I'm

1 Assistant Administrator, El Centro Regional Medical  
2 Center in beautiful El Centro, where it's about 113 right  
3 now, and the wait at the border is about an hour.

4 I specifically am here to represent the hypothetical  
5 small rural border hospital in the huge county where  
6 you're a sole provider. Eighty-five percent of the  
7 population is Hispanic. Less than 50 percent can read in  
8 any language. And the average family income is less than  
9 \$30,000 per year. A rather unique constituency that I'm  
10 going to try to help you to understand a little bit  
11 about.

12 We have spoken -- I have spoken with a good number  
13 of my employees and find that the things that they want  
14 are clarity. They want to know what the rules are. They  
15 want rules that work in their environment, the hospital,  
16 acute hospital environment, plus clinics. We do all the  
17 many different things. And they don't want -- they have  
18 no interest in anybody having any takeaways.

19 A very interesting measure, and I'll say this really  
20 quickly, I spoke purposely with a number of our  
21 travelers, travel nurses that have come to us from other  
22 states to help us to wrestle with our ratios issue and  
23 the huge staffing shortage that we have. I spoke with  
24 some of our nurses that have just immigrated to come to  
25 work for us from Korea, India, the Philippines. I also

1 have a good number of nurses who cross the border every  
2 day and who are actually Mexican nationals. Physicians.  
3 Some of them are physicians in Mexico.

4 As I said, here's what we're facing. Here's the  
5 situation. What do you think of that as someone who's  
6 new to this country and sees this fresh on? And their  
7 unanimous response was this is a really ludicrous  
8 situation. They wanted to be able to decide when and  
9 where and if they're going to eat, and have determination  
10 and do it the American way. Thank you.

11 COMMISSIONER BRADSTREET: Thank you very much.

12 UNIDENTIFIED FEMALE: Jesse Ramos or Mark Smith?  
13 The next five speakers will be Maria Sura, Lilia Garcia,  
14 Harold Polis, Holly Resha, and Karen Profeta.

15 MR. HOLLIS: Good afternoon. Thank you for allowing  
16 me to be here. My name is Harold Hollis. I'm the  
17 General Manager from Veolia in Van Nuys. And we're in  
18 the transportation industry. We transport thousands of  
19 people a day, just like the public sector, although we're  
20 private. We would like some flexibility to be exempt  
21 like the private -- like the public sector, whereas they  
22 can control their lunch hours and their breaks. Thank  
23 you.

24 COMMISSIONER BRADSTREET: Thank you very much.

25 MS. SURA: Good afternoon. My name is Maria Sura.



1 My experience is in the janitorial industry. I've worked  
2 without being provided a lunch or a break. I had to  
3 clean 11 floors, 22 bathrooms. They never told me that I  
4 had to take a lunch or a break. There was a lot of  
5 pressure for me to finish my job.

6 I'm speaking on behalf of all of my coworkers in  
7 cleaning as well. Please don't change the law. We want  
8 to have our break and lunch. Thank you.

9 COMMISSIONER BRADSTREET: Thank you very much.

10 MS. GARCIA: Hi. Good afternoon. My name is -- oh,  
11 I'm sorry. Go ahead. No, no. Please. I didn't see  
12 you. Okay. Sorry.

13 My name is Lilia Garcia. I represent the  
14 Maintenance Cooperation Trust Fund. We're a janitorial  
15 watchdog group. We represent two interests in this  
16 matter. We represent employers who fund us to deal with  
17 the unfair advantage. They may not like the law. They  
18 understand that if the law exists, they need to do what  
19 they need to do to limit their liability. And then  
20 they've been able to do so. What they asked of the  
21 agency is that enforcement be vigilant and deal with  
22 their competitors who don't follow the rules.

23 We also represent the nonunion workers. There are  
24 221,000 janitors in California, and only 25,000 of those  
25 or so are union. We deal with the nonunion sector. Most

1 of these workers, as you just heard from Maria, are  
2 immigrant workers who aren't familiar with their rights.

3 And, you know, we've heard today, I could appreciate  
4 the opinions from the employers in the room. They are  
5 the responsible employers and the leadership. But the  
6 majority of claims that your agency deals with and that  
7 we deal with are with predatory employers who have no  
8 intention to follow the rules. And these workers are  
9 working in conditions that none of us here would want to  
10 work for. They need additional protections.

11 I'd like to talk about flexibility as it's been  
12 discussed here. And I'm going to speak about our cases  
13 specifically. We've had cases in eight DLSE offices  
14 throughout the state, so we have worked with various  
15 seniors, deputies, conference deputies, hearing officers,  
16 and as well as with Legal on these matters.

17 I want to talk about two cases. One was of the  
18 Target stores. It involved more than 800 janitors, 114  
19 stores in California. There was a \$6 million audit  
20 conducted in this case. Four million of that audit was  
21 for the meal and rest. The Division settled the matter  
22 for only 2 million, which was the overtime. So we saw  
23 flexibility there. And what happened is that employer  
24 became compliant.

25 And the second case is an Orange County case, a

1 large firm, and the employer brought in hundreds of  
2 affidavits that were not in the wage period and had all  
3 kinds of other issues. But the hearing officer accepted  
4 them. And these affidavits were stating that people were  
5 taking their breaks.

6 So we've seen that the Division has exercised  
7 reasonable judgment when dealing with what the claimants  
8 are alleging, and also what defense counsel is stating.  
9 We'd ask you to please remember the millions of workers  
10 that weren't able to be here today, the most vulnerable  
11 workers who need this right. Thank you.

12 COMMISSIONER BRADSTREET: Thank you very much.

13 MS. RESHA: Good afternoon. Thank you for the  
14 opportunity. My name is Holly Resha. I'm the Regional  
15 Director of Human Resources for College Health. We are  
16 mainly in the mental health business.

17 We employ caring and compassionate patient care  
18 providers. We need them and we love them. We travel the  
19 world to recruit them. We want to treat them with utmost  
20 respect and deserve dignity, the way they respect and  
21 serve our patients. But the law ties our hands when we  
22 have to discipline them for not complying with the rigid  
23 meal period rule.

24 We insult our nurses' intelligence and  
25 professionalism when we tell them, you have to leave this

1 patient now. You have to leave your surgical procedure  
2 now. You have to leave your medical procedure now. You  
3 may not finish drawing the blood now. And why? Because  
4 the law says you have to begin your meal period precisely  
5 at the fifth hour of your shift, and you're running out  
6 of time.

7       When an assaultive psychiatric patient attacks the  
8 nurses on duty, their coworkers may not leave their lunch  
9 break and rush to their aid even when they hear the code  
10 because we comply with the meal period rule.

11       When -- or at the fifth hour, when the fifth hour  
12 strikes and our driver is in the van with eight  
13 psychiatric patients on the freeway stuck in LA traffic,  
14 the law requires that he goes off duty for no less than  
15 30 minutes. If he does not abandon his patients on the  
16 street, on the freeway, in the middle of the traffic, he  
17 risks breaking the law, and we could be penalized. Does  
18 this make sense to anyone?

19       Please give our employees a true flexibility. Give  
20 us a practical meal period rule that respects our  
21 employees' common sense. Thank you.

22       COMMISSIONER BRADSTREET: Thank you.

23       MS. PROFETTA: Hi. Good afternoon. I'm Karen  
24 Profetta. I'm a Registered Nurse and a Nurse Manager in  
25 an obstetrical unit. We have 12-hour units and we work

1 from 7:00 to 7:00.

2 Due to the restrictive nature of the meal period  
3 rules, negative impacts in the continuity of care in the  
4 obstetrical nursing is seen daily. We have nurses caring  
5 for and laboring with women delivering babies. In the  
6 middle of their labor they may be called out just as the  
7 woman's getting ready to deliver. Someone that they  
8 bonded with. You can imagine your nurse being taken away  
9 from you because you're told, I'm sorry, your nurse has  
10 to take her meal break. It's -- for nurses, for  
11 professionals, it just seems ridiculous. You know, I  
12 don't want to believe my patient. And yet, they have to.

13 Nurses assisting in deliveries with fetal demises  
14 takes a new dimension. These women have gone through a  
15 tremendous ordeal. They've bonded with the nurse. The  
16 nurse finds an appropriate time when it's -- when she's  
17 ready to leave the parents, when the parents are ready  
18 for her to leave after consoling the grieving couple.

19 When it's reaching that fifth hour, you know, we go  
20 in and have to professionally, you know, let the nurse  
21 know, okay, you need to take your meal break. We'll send  
22 somebody else in. We've always got the relief nurses.  
23 But that's not the same thing. It's not the same as the  
24 nurse that they've bonded with.

25 The mandatory breaking at inopportune times is

1 dramatically affecting staff morale and patient  
2 satisfaction. Staff see themselves as not being treated  
3 as professionals who are responsible enough to know that  
4 they have to take a break.

5 This isn't about if the staff's going to take a  
6 break. They're going to get their break. It's about the  
7 flexibility of them to be able to choose when they're  
8 going to take it.

9 With a staff of over 16 nurses on any given day, I  
10 meet resistance with those nurses that have to be the  
11 first ones to take the break, because we also start at  
12 10:00, 10:30 in the morning. That's just too early when  
13 their shifts aren't over 'til 7:00, 7:30 at night.

14 I feel as a manager too much of my time enforcing  
15 the meal break rules and counseling for lack of  
16 compliance on part of the staff. So where are our  
17 priorities? I just ask you to consider this and to  
18 please provide us with a set of clear realistic  
19 commonsense meal break rules that support the hospital  
20 environment.

21 COMMISSIONER BRADSTREET: Thank you very much.

22 UNIDENTIFIED FEMALE: The next five speakers will be  
23 Cynthia Leone, Jonathan Barnado, Linda Higgins, Jane  
24 Flynn, Steve Rodriguez.

25 MR. BARNADO: Hi. Jonathan Barnado on behalf of the

1 California Restaurant Association. We represent over  
2 about 22,000 member restaurants in the state of  
3 California. A couple points I want to reiterate. I know  
4 we testified in Sacramento, but I wanted to respond to a  
5 few things.

6 One, we are not here today advocating that any  
7 restaurateur who doesn't provide meal breaks or doesn't  
8 offer them to the employees and makes that happen as they  
9 should be set under the law. We're not advocating that.  
10 We are advocating for flexibility. But let me define  
11 that a little bit better.

12 For our waiters, our servers, most of their income  
13 actually comes from tips. And most of them are actually  
14 paid minimum wage. But they're actually making 15, 20,  
15 sometimes \$30 an hour, and that is all coming from tips.  
16 And so there is great disincentive for servers to go off  
17 for their meal break in the middle of a time when the  
18 restaurant is in a busy time for that period. They are  
19 going to be making most of their income during that  
20 period. And for them to take a 30-minute break affects  
21 their daily income, their weekly income, and their annual  
22 income significantly if they're forced to take it in the  
23 middle of these times.

24 What we're asking for is flexibility for those  
25 employees where there is mutual agreement between the

1 employee and the employer either to move their break to a  
2 time that works for both the employer and the employee,  
3 or waive it altogether in certain instances.

4 Also, I can't undermine how much this creates  
5 acrimony between the employer and employee in enforcing  
6 this, especially when you're talking about their income,  
7 as employers can affect that.

8 Also, I want to say we've seen in the restaurant  
9 industry also in response to this that they start  
10 scheduling four- or five-hour shifts only for their  
11 employees and hire more employees. That what happens is  
12 we find employees that are now full time employees being  
13 shifted to part-time, and in those cases they're losing  
14 less income -- they're losing income, and they're also  
15 losing benefits that they would have previously qualified  
16 for.

17 And finally, we want flexibility in a system that  
18 where we have employers who treat their employees well,  
19 try to do the right thing, and because it's difficult to  
20 manage and police, you know, 30-minute lunches in the  
21 middle of a busy period of time, they're facing huge  
22 liabilities that potentially put a lot of these small  
23 independent restaurants at the risk of closure. So,  
24 thank you.

25 COMMISSIONER BRADSTREET: Thank you very much.



1 MS. LEONE: Good afternoon. Cynthia Leone with the  
2 California Manufacturers and Technology Association. I'm  
3 not going to repeat what a lot of our employers have  
4 already echoed. We represent a wide variety of  
5 industries, from assembly lines to manufacturing, food  
6 processes, oil industry, and biotechnology.

7 The problem and I think the message that we're  
8 hearing consistently throughout the day is that it's  
9 very, very difficult to implement a one-size-fit-all  
10 regulation. Some of our industries, specifically oil  
11 refineries, have a specific duty to be on site 24 hours a  
12 day. That means 12-hours shifts. Which makes it very  
13 difficult to comply if they're not qualifying for on-duty  
14 periods.

15 We really would encourage the division to look at  
16 all these constraints that have been raised. All our  
17 members have been encouraged to submit written comments  
18 to address specifically their concerns on an industry-by-  
19 industry basis. Thank you.

20 COMMISSIONER BRADSTREET: Thanks. That will be  
21 helpful to get that.

22 MS. HIGGINS: Hello. My name is Linda Higgins and  
23 I'm here representing Addis Healthcare. We're a home  
24 health agency that services over 2,000 clients throughout  
25 Southern California. And I'm sure you'll recognize that

1 our industry is similar to the hospital. We -- our  
2 workers are in the homes, and most of the time they're  
3 there for three- to four-hour shifts and taking care of  
4 our clients', mostly elderly clients, needs.

5       During their visits, they are the only person  
6 available to take rest breaks and meal periods, nor do  
7 they have an onsite, online backup for their breaks.  
8 They cannot shut down and stop for a 10-minute break. It  
9 is unreasonable to expect a rest break or to eat their  
10 lunch.

11       But Addis has strict adherence to the rest and meal  
12 period regulations that would require that, we would need  
13 to compromise the needs of our clients, most of whom are  
14 elderly and unable to take care of themselves, or need  
15 life supporting medical services just so we can avoid  
16 violating the wage and hour regulations.

17       This, in our view, is not only impractical but  
18 absolutely inhumane. If it was your mother, she would be  
19 receiving only three hours of much needed medical  
20 personal care a day. How would you feel if a caregiver  
21 had to leave her unattended to walk out of the house and  
22 take her 10-minute break to have a snack? Not just  
23 because she chose to do so, but because the government  
24 regulations required it. I believe you would be outraged  
25 and incredulous that any regulation would require such

1 insensitivity, and that recognizing this flaw the  
2 irresponsible regulatory agency would not make necessary  
3 changes to correct this.

4 To make the situation worse, I think right now it's  
5 the lawsuits that are pending because of, you know, the  
6 non-flexibility in the taking of break of the lunch and  
7 the break time. Thank you.

8 COMMISSIONER BRADSTREET: Thank you.

9 MS. FLYNN: Hi. I'm Jane Flynn. I work in  
10 intensive care at a little company, Mary Hospital, in  
11 Torrance. We work 12-hour shifts. The rigid enforcement  
12 of this law has created an unnecessary air of discontent  
13 among my colleagues.

14 As 12-hour employees, this regulation does not allow  
15 us to go to lunch between the 6th and 8th hour of shift,  
16 which means that we cannot eat between 12:00 and 2:00 on  
17 any given day. We are in a 24/7 work environment.

18 Any occupation has unexpected events happen during  
19 the course of a day. But in intensive care in a  
20 community hospital, things happen on a daily basis that  
21 can greatly change even the best of scheduled meal break  
22 periods. A code blue on the floor transferring to ICU  
23 can disrupt two, maybe three RNs with their morning meal  
24 periods.

25 If we are taking care of a patient who is extending

1 his heart attack, he may need to have a special pump put  
2 in to help him live. The nurse that had been caring for  
3 him may not be qualified to take care of the patient, and  
4 we have to change assignments. This means, again,  
5 shifting maybe two or three meal periods for  
6 accommodating those nurse assignments.

7 Say my charge nurse comes to me at 12:15 and says,  
8 Jane, you're going to get a very critically ill patient  
9 from the operating room at around one o'clock. I plan to  
10 go to lunch at 2:00. But knowing that I'm going to get  
11 somebody that can't probably be cared for easily over the  
12 hour, I'm going to want to go to lunch at 12:30. I want  
13 to be refreshed and nourished so that I can better take  
14 care of that patient.

15 Many of the staff have adjusted to this enforcement  
16 of this law in various ways. One comment is, I'm a  
17 professional, and as a member of a healthcare team, I  
18 resent being counseled because I clock back in from lunch  
19 after 28 minutes. My employer is responsible for finding  
20 a meal period and relief for me to take a meal period.  
21 But it is my responsibility, my personal responsibility,  
22 to insure that I take that time away from work.

23 In regard to that, I think we need to seek some  
24 clarification or definition on exactly what provide  
25 means. If my employer provides a meal period at the end

1 of five hours, does that mean I have to take that meal  
2 period? Why can't I use my own personal judgment in  
3 knowing when it is appropriate for me to leave my  
4 patient, and in making that decision also include looking  
5 out for my own well-being.

6 COMMISSIONER BRADSTREET: Sorry, but we need to wrap  
7 this up. You're welcome to submit the rest of it.

8 MS. FLYNN: I certainly will. Thank you.

9 COMMISSIONER BRADSTREET: Thank you very much for  
10 being here.

11 UNIDENTIFIED FEMALE: I'm going to call off the  
12 remaining speakers. Antonio Sanchez, Gregory Batten, Jim  
13 Hilfenhouse, Patty Sincall, Lisa Elston, Chris Falewyn,  
14 and Julie Brills.

15 MS. FALEWYN: Good afternoon. My name is Chris  
16 Falewyn. I work for SDA Security as HR Manager in San  
17 Diego.

18 These rest and meal periods have just become an  
19 administrative nightmare for me as I feel like I am the  
20 lunch police. I need to review timecards and punches  
21 each payroll period to insure that the employee took  
22 their lunch at the right and for the right length.

23 If the employee doesn't start their lunch by the  
24 fifth hour or take a 30-minute uninterrupted lunch, I  
25 write them up and they think I'm crazy. That is the only

1 way for me to protect the company from the liability. I  
2 would rather be doing other important matters in my role  
3 as the HR Manager.

4 When I explain to management the meal and rest  
5 period rules, they actually think I make this stuff up in  
6 my sleep. Only from California would it be so  
7 ridiculous. If the employee wants to waive their lunch  
8 for an eight-hour workday, let them. They can sign a  
9 waiver. If the employee wants to eat lunch at their  
10 desk, let them. They can sign a waiver. If the employee  
11 wants to take a 20-minute lunch, not a 30-minute lunch,  
12 let them. They can sign a waiver. Let the employee have  
13 rights. Let me attend to more important matters. I no  
14 longer want to be the lunch police. Thank you.

15 COMMISSIONER BRADSTREET: Thank you. I'm sorry.  
16 What was the name of the company, your business?

17 MS. FALEWYN: SDA Security.

18 COMMISSIONER BRADSTREET: Thank you.

19 MS. ELSTON: Good afternoon. My name is Lisa Elston  
20 and I too work at SDA Security. There we monitor -- our  
21 central station monitors over 7200 different residents  
22 and businesses across Southern California, burglar alarm,  
23 fire intrusion, hold-ups, that type of thing.

24 If our central station goes down, myself being in  
25 the Information Technology Department, it is my sole

1 responsibility to make sure that those receivers, which  
2 are the devices receiving the signals from the field,  
3 it's my responsibility to bring those receivers back up.  
4 Failure to do so in a timely manner can cause a loss of  
5 property, or worse, a loss of life.

6 We also monitor biotechnical freezers. Failure to  
7 promptly report a drop in temperature can result in years  
8 of research lost and millions of dollars lost.

9 Also, I'm responsible for our company's computers  
10 and phone networks. Should there be an emergency  
11 happening at lunch, which doesn't happen often, but does  
12 every now and again, we have to bring them back up  
13 quickly. Again, otherwise we could have loss of signal  
14 or loss of productivity, can't receive phone calls, that  
15 type of thing.

16 Finally, I'd like to mention that I too work in the  
17 field installing and helping to maintain access control  
18 software. Basically, that's who can go into what doors  
19 and when they can go in. If there happens to be a loss  
20 of power, some of the doors in some facilities lock down.  
21 Well, if that loss of power is due to a fire, it's my  
22 responsibility to get those doors unlocked so that we can  
23 get people out more doors for safety. So, thank you very  
24 much for your time.

25 COMMISSIONER BRADSTREET: Thank you.

1 MS. SENEAL: Good afternoon. Thank you. My name  
2 is Patty Senecal representing the International Warehouse  
3 Logistics Association. It's a national association. And  
4 I'm representing California distribution centers. We  
5 would like to -- we're also submitting written comments,  
6 but just a couple highlights.

7 IWLA does support meal and rest breaks. However, we  
8 support the need for consideration, and we echo the  
9 comments of the trucking companies and the trucking  
10 association here today.

11 What I'd like to discuss with you is the impact of  
12 the current situation on distribution centers,  
13 predominantly international warehouse distribution  
14 centers. Since 911 the distribution centers that handle  
15 international cargo have entered into a partnership with  
16 U.S. Customs. It's called CTPAT, Customs Trade  
17 Partnership Anti-Terrorism. And within the new protocols  
18 and the certification process, the distribution centers  
19 must take control and access of everyone entering and  
20 exiting their terminals, including the outside motor  
21 carriers.

22 Before 911 we used to allow a lot of the trucking  
23 companies to take breaks. They could break inside our  
24 yards. They could sit in their trucks, do paperwork.  
25 Give them access to our break rooms, et cetera. Since



1 the law -- or excuse me, since 911 and the CTPAT process,  
2 we no longer can give access to drivers. Unescorted  
3 access is out. We must have them do their transaction  
4 and leave. And so allowing trucks to sit in our yards  
5 and idle and do paperwork, that flexibility is now gone.

6 Hence, those trucks are now pushed out of the  
7 distribution centers onto the streets. And so we're  
8 seeing from our members a lot more complaints from  
9 communities impacted by trucks who are going out onto the  
10 streets in front of the distribution centers to take  
11 breaks. And that creates situations where we have  
12 queuing of trucks. We get trucks that are being ticketed  
13 because of parking.

14 Also, one of the aspects on CTPAT for us is we have  
15 control and access. We have to control the outside  
16 perimeter of the distribution centers. And now we have  
17 trucks queuing and blocking the views of the distribution  
18 centers to see what's going outside our perimeter.

19 The trucks that are breaking outside terminals,  
20 again, it's drivers wanting to run trucks for air  
21 conditioning. So we have the issue of more fuel  
22 consumption, pollution. And it also puts these drivers  
23 at risk for cargo theft.

24 And so we would like to support the trucking  
25 industry and the truck drivers and the dispatchers,

1 et cetera. They should have flexibility and discretion  
2 to break these drivers where it benefits the drivers for  
3 safety, cargo security, public safety. Also  
4 environmental impacts can be reduced, and also reducing  
5 community impacts.

6 So at our marine terminals we have the same  
7 situation. Fifteen minutes to us can make or break a  
8 driver getting into a port. And if that 15 minutes,  
9 because he had to stop and do something different, can  
10 mean that he's shut out of a terminal for an hour and a  
11 half. And so, again, we'd like the driver or the  
12 dispatcher to have the ability to get inside the terminal  
13 and take their breaks at their discretion.

14 And just like today, we saw how you exhibited  
15 flexibility in deciding to have a shorter break and run  
16 your hearing so you could accommodate comments. That's  
17 kind of what we're asking for from an industry  
18 perspective is flexibility so we can make sure we meet  
19 the needs of our customers. Thank you.

20 COMMISSIONER BRADSTREET: Thank you very much.

21 MS. BROYLES: Good afternoon. Julianne Broyles.  
22 I'm here on behalf of the California Employment Law  
23 Council. And thank you again for holding these forums so  
24 people could hear about what has been going on in  
25 California workplaces over the last several years.

1 I think it's important to note, and I know that  
2 others have made the point, that while it was a fairly  
3 quick turnaround on the notice of the hearings, you  
4 should expect a lot more in comments over the next few  
5 weeks as the deadline comes up.

6 I did want to point out a couple of things, and I  
7 think it's been very clear from what has been said here  
8 today, employers and employees need a clear roadmap.  
9 They're making detours and wrong turns into areas that  
10 get them into trouble. Not intentionally for the most  
11 part. And for those employers who are breaking the law,  
12 absolutely the penalties are there to stop them from  
13 doing it, and Enforcement should go after them.

14 But for those employers who are merely trying to do  
15 the right thing by their employees, clear guidance is  
16 needed, a roadmap so employers don't end up on the wrong  
17 side of the law merely by trying to do right by their  
18 employees. Because at the end of the day, the only  
19 people who benefit from that are the trial attorneys.  
20 And that's not really what should be the purpose of any  
21 law.

22 We do think that under the current rule there are  
23 several things that really do need to be addressed, and I  
24 wanted to just give you a short list. We need a clear  
25 definition of what it means to provide. I think that's

1 critical in the overall scheme of things to make sure  
2 that that occurs.

3 We need to clarify when the obligation of the  
4 employer to provide the meal period begins and even ends.  
5 I mean it's -- I've heard this on and over -- on and off  
6 today of when can we start it? Is it the first minute of  
7 the fifth hour? Is it -- do they have to take it by the  
8 last minute of the sixth hour? Is it some other period  
9 of time depending on the length of the shift?

10 We need to set out timeframes for meal periods for  
11 both the regular workday and a longer workday. We need  
12 to clarify how and when an employee can waive one of the  
13 two meal periods when they're in a longer workday. We  
14 need to clarify what the meal period obligations are even  
15 in the split shift or graveyard shift settings.

16 We need to -- for the on-duty meal periods, we need  
17 to clarify when and how on-duty meal periods --

18 (End of cassette three, side A; continuing  
19 on cassette three, side B.)

20 MS. BROYLES: -- today at least based on prior  
21 opinion letters issued by the DLSE. We do think that we  
22 need to clarify and provide, again, a roadmap,  
23 instructions on how and when employees can request and  
24 receive a waiver on their meal periods if that's what the  
25 employee wants to do. I think the perfect word I heard

1 today to describe that is employee preference should be  
2 able to drive that particular action. And I think it's  
3 important that it be addressed.

4 And last of all, we do need to create a collective  
5 bargaining carve out for those employers who are  
6 organized, or wish to bargain us with their unions, so  
7 you have sensibility and reality in employer labor  
8 relations, so at the end of the day you have a reasonable  
9 treatment of both union and nonunion employees.

10 If you have any questions? We'll be doing certainly  
11 many more comments in writing. But I thought that would  
12 help in terms of trying to just focus in on what we think  
13 as employers. Because CELC are the largest companies in  
14 California. They're the most responsible employers. And  
15 they just want to see this solved. Thank you.

16 COMMISSIONER BRADSTREET: Okay. Thank you very  
17 much. Thank you.

18 MR. HILFENHOUSE: My name is Jim Hilfenhouse. And  
19 I'm here representing Laborers Local 300 and the  
20 construction industry. As my brother from the electrical  
21 workers put it, we have at least contract protection on  
22 this. And listening through this morning, I hear a lot  
23 of association, human resources directors, and attorneys.  
24 You need the workers in the field.

25 Flexibility spoken by management becomes an

1 interesting quotation between employers and then a  
2 paycheck. Yes, there would appear to be, I'd be your Bar  
3 card, that necessity is an appropriate defense in some of  
4 these circumstances. And what I've heard from the  
5 truckers is we need more rest break periods, not that the  
6 breaks aren't needed. It just presents an awkward  
7 professional position on that.

8         When we work in a construction job and a concrete  
9 pour, and I heard about hot loads, there is a necessity  
10 to get the work done. However, it's extremely  
11 excruciating backbreaking work for somebody out in the  
12 field. They need those breaks. And you need to have  
13 some rational approach to it. And we do it in a contract  
14 situation. But we represent 10,000 employees versus  
15 management. So we sit down at the table and do it.

16         When it's an individual versus their employer, that  
17 flexibility question becomes very unique when you think  
18 that maybe if you say no and you're an at-will employee,  
19 will you have a job the next day. So please keep that in  
20 mind.

21         I know there needs to be certainly more input from  
22 the workers in this situation, not from associations, not  
23 from paid representatives coming up here speaking to you,  
24 but in the field practicality. You know, yes, you do  
25 have to consider that.

1           And certainly I would hear in the nurses, having  
2 represented them, the employers were certainly attempting  
3 to run their caseload up as high as it could be before  
4 legislation was invoked to establish a ratio. So you  
5 need the on-the-job experience. And absolutely nobody  
6 would recommend taking a break in the middle of a  
7 procedure, or something that would endanger a patient's  
8 life. But certainly there is almost no interest on the  
9 other side to not maximize the productivity of the worker  
10 at their expense and health. Thank you.

11           COMMISSIONER BRADSTREET: Thank you.

12           UNIDENTIFIED FEMALE: And I'm just going to run  
13 through the names of people that actually we called  
14 earlier and that either weren't here at the time, or have  
15 come back. Steve Rodriguez, Rick Hendrix, Gene Nguyen,  
16 Chris Rooney, Lorraine Vissy, Yaz Intow, Jesse Ramos,  
17 Mark Smith, Richard Limebach, Kelly Hinnett, Antonio  
18 Sanchez, Gregory Batten, or if there's anyone else who  
19 would like to speak.

20           COMMISSIONER BRADSTREET: Oh, yes, sir? Okay. This  
21 is our last speaker for the day.

22           MR. JACKSON: Good morning, Chairman. My name is  
23 Charles Jackson. I was talking with the drivers of First  
24 Transit Company. We're asking you not to drop this law.  
25 We need the lunch break for health reasons, and we need

1 the rest time. Because we're going back and forth, back  
2 and forth. And it's for the safety of the passengers.  
3 If we have to run 10 hours a day without a break, you  
4 could have accidents. So we're asking you to keep this  
5 law in effect like it is.

6 COMMISSIONER BRADSTREET: Okay. Thank you very  
7 much. So that ends the forum for today. I want to thank  
8 everybody for a very, very informative discussion, and  
9 for your courtesy throughout. It was much, much  
10 appreciated and very, very informative for us. And I  
11 encourage all of you and your various organizations,  
12 workers, et cetera, to submit written comments by the  
13 August 31st deadline. Thank you very, very much.

14 (Meeting adjourned.)

15

16

17

--oOo--

18

19

20

21

22

23

24

25



