

Meal Periods
 Summary of Written Comments
 From
 2007 Public Forums By
 The Labor Commissioner
 (Written Comments postmarked up to and including August 31, 2007
 as well as submitted at the Public Forums)

| Commenter | Flexibility of timing of break | Definition of "provide" | Potential for Abuse of workers | Health and Safety | Collective bargaining issues | Discipline of employees for not taking break | On-duty meal period | Waiver of the first meal period | Waiver of the second meal period | Duration of break | Productivity | Block of time approach | No change needed |
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| Form letter 1 (578 forms; majority – truck drivers) | The current state regulation on meal and rest periods denies workers the flexibility they need. | | | | | If employees do not take meal breaks within 5 hours, they can be penalized. | | | | | | | |
| Form letter 2 (41 letters: truck drivers) | The current rules result in reduced flexibility for work hours. When driving, it is inconvenient and sometimes dangerous to pull over for breaks at set times. | | | | | | The ability to take an on-duty meal break could result in shorter work days. | | It would be a great benefit if the rules provided the ability to waive the second meal period for shifts greater than 12 hours. After working such long hours, the main goal is to go home as soon as possible. | The flexibility to take shorter meal breaks could result in shorter work day. | | | |

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| Form letter 5 (9 letters: truck drivers) | | | | | | | Since there is a short time-table involved with the delivery of concrete, meal breaks used to be adjusted based on the nature of the work. Meal breaks were always a paid period regardless of work needs or demands. This non-documentation of a meal period has resulted in lawsuits. Now, employees must take an unpaid meal period. | | | | | | |
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| Form letter 8 (2 letters: truck driving industry) | We would like to use the policy utilized by the concrete/cement mixer industry. | - The unpredictable nature of our industry makes specifying and supervising the timing of breaks problematic. - The current rules place the onus for ensuring compliance on employers who have little on-site control over when and how employees choose to take their breaks. | | The safety of our drivers is already addressed by federal and state motor carrier regulation (Title 13, Ca Code of Regulations. | | | In many situations, the nature of the material being hauled is time sensitive and drivers cannot leave their truck or pull over to take a break. Also, there are many instances when drivers waiting to load or unload have considerable rest time. The issue of truck parking also has to be considered. | | | | - Due to hours of service regulations, mandatory breaks will have the unintended consequence of costing a driver at least 1 hour a day in earning potential, or 6 to 8% in annual wages. - Many drivers are independent contractor truck owners, who are not subject to these rules. As a result, companies who utilize employee drivers are placed at a considerable economic disadvantage. | | |
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| Form letter 3 (3 letters, of which one signed by 8 people: health care workers) | For those with 12 hour shifts, the requirement for a break before the fifth hour of the shift results in breaks less than half way through the shift. It would be more appropriate to ensure the meal break occurs within the first 8 hours of the shift. | | | | | Managers and charge nurses are being disciplined if staff does not clock out for a break. If one clocks back in at 29 minutes, they are reprimanded. | | | | If one clocks back in at 29 minutes, they are reprimanded. | Some nurses clock out to comply with break, but continue working to ensure patient care. | | |
| Form letter 4 (3 letters: restaurant owners) | Tipped employees would prefer to have the flexibility to take their meal when there is a slowdown to maximize their tip income or take off 30 minutes early for personal reasons. | Due to the definition of "provide", we are forced to police our employees to take their meal break. | | | | The financial liability faced by an employer if an employee clocks-in 1 minute early results in companies having to discipline and possibly terminating workers or reducing their work hours to 5 hours or less. | | | | The financial liability faced by an employer if an employee clocks-in 1 minute early results in companies having to discipline and possibly terminating workers or reducing their work hours to 5 hours or less. | | | |

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| Form letter 6 (11 letters) | If there were companies taking advantage of employees prior to this law, this "one law fits all" has done little to assist those workers. Enforcement is only taken against larger, financially sound companies. | | | | | | | | | | | | |

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| Form letter 7 (3 letters: union and association) | | | | | - In Bearden v. U.S. Borax, the court ruled that Section 10(E) of Wage Order 16 is "invalid". We are uncertain as to what the DLSE's enforcement policy is in light of Bearden as well as whether Bearden would also invalidate Sections 11(D) and (E) of W.O. 16. - DLSE should adopt a policy that collective bargaining parties can determine what constitutes "equivalent protection" regarding rest periods, and should adopt a policy that disputes should be resolved pursuant to the CBA. | | | | | | | | |

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| Form letter 9 (777 letters) | | | All workers deserve time to eat and rest without intimidation or fear of reprisal. | Health experts agree that workers need regular breaks to prevent injuries to themselves, co-workers, and the public caused by repetitive stress, hunger, and fatigue. | | | | Current law already allows lunch breaks to be waived by mutual consent for shifts of fewer than 6 hours and also makes other allowances. | | | | | We oppose any new lunch break take-away. The Labor Agency should be protecting workers' rights, not trying to undermine them. |
| Form letter 10 (323 letters: health care professionals) | | | Currently, it is hard enough for us to get breaks guaranteed to us by state regulation. There are workers missing meals and working through breaks, in part due to dedication to their patients, but in part due to poor staffing and intimidation by their supervisors to avoid paying overtime. | Loosening the rules would have grave consequences. Hungry, exhausted health care workers are prone to make mistakes and can't give patients the full attention they deserve. If you attack humane rules on breaks, you will endanger patients. | | | | | | | | | Rather than weakening the regulations, please enforce the current rules better and consider strengthening them. |

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| Form letter 11 (111 letters: members of various unions) | | | All workers deserve time to eat and rest without intimidation or fear of reprisal. | - Health experts agree that workers need regular breaks to prevent injuries to themselves, co-workers, and the public caused by repetitive stress, hunger, and fatigue. - Workers who work with chemicals, pesticides, excessive heat, and heavy machinery are particularly at risk if employers are no longer required to provide breaks. | | | The law permits on-duty lunch breaks if required by the nature of the work and agreed to by the employee. | - Current law strikes the right balance between flexibility and worker protection. The law already allows lunch breaks to be waived by mutual consent for shifts of fewer than 6 hours. - Workers can request "make up time" if they need to leave early and can work extra hours later in the week without accruing overtime. | | | | | - We oppose any new lunch break take-away. The Labor Agency should be protecting workers' rights, not trying to undermine them. - Recent court decisions, such as Murphy, protect workers and should not be overturned to help corporate lawbreakers. |

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| Form letter 12 (16 letters)) | | | It is my understanding that you are considering changing the current requirement that employers monitor and ensure that their employees receive timely meal breaks. If my employer were given the option of providing me with a meal break, they would certainly choose not to guarantee that I receive the timely break. | | | | | | | | | | I strongly urge you to maintain the current strong regulations and not to weaken the current requirements by changing them to "voluntary." |

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| Form letter 13 (60 letters: bus drivers) | | | | | | | | | | | | | Please protect our rest and meal breaks. Do not change the law that guarantees us these important breaks. Keep the current language on lunch and rest periods the same because we work from 8 to 10 hours per day. |
| Form letter 14 (11 letters: bus drivers) | | | | The constant stress of working with the public and dealing with traffic can be overwhelming at times. My breaks allow me to rest and recharge. Without breaks, it would be very hard for me to focus on my job of safely driving kids and the public around town. | | | | | | | | | Please protect our rest and meal breaks. Do not change the law that guarantees us these important breaks. |

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| Form Card 1 (11 cards; a few are in Spanish) | | | I am concerned that DLSE is laying the groundwork for a new proposal to take away workers' fundamental right to a guaranteed lunch break. | | | | | | | | | | |
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| Duran & Venables, Petition signed by 32 employees | We request the flexibility of free choice when to take a meal period. | The employer should not be placed in the position of enforcer, forcing the employee to take a meal period when it is not wanted. | | | | | | If we voluntarily decide to take the meal period at the end of the shift for any reason, we should be allowed to do so. | | | | | |
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| Sequoia Hospital Clinical Laboratory, Petition signed by 19 employees | In a clinical laboratory, the work load is unpredictable and the time demands cannot always be anticipated. It is frequently impossible, and potentially detrimental to the patient for us to take a required meal break in the middle of a test procedure. | | | | | | | | | | | | |
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| Ron Borges, Bettendorf Trucking | | Our business is unsupervised labor; all we can do is take our drivers' word that they are complying with the lunch break rule. | | | | | Most of our drivers eat during their break or waiting to load/unload, yet still have to stop later in their shift and sit idle for no pay. If a driver is responsible for the vehicle he/she is driving and is completely unsupervised, then how are they ever to be totally relieved of all duty? | | | | | | |
| Terry Jaco C.R. England, Inc. | I would like to offer my employees the flexibility to attend to personal matters. | | | | | | | | | | | | |
| Jerry Cheatwood, C.R. England Transportation | Flexible meal and rest periods are required for the trucking industry. | | | | | | | | | | | | |
| Walter Flores, United Oil | If a driver stops in a location that is not secured, the driver will be cited and could end up losing his license. | | | Due to the cargo (fuel) that we transport, our drivers see this rule as a hazard for themselves and the public. | | | | | | | | | |

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| Butch Strong, Manager | | | | | | | Our drivers take a paid lunch break while waiting for their truck to load/unload. Our drivers are much happier getting paid to take a lunch rather than taking an unpaid meal period. | | | | | | |
| Carl Able, Truck Driver | | | | | | | It is not an easy thing to get a truck off the road for a mandatory break. The driver should have the ability to decide whether to take an on-duty or off-duty meal period. | | | | | | |
| Max Wagoner, Los Angeles Freightliner; Las Vegas Freightliner | | Employees do not want to be forced to take a 30 minute meal break. Make laws that penalize companies for not allowing employees breaks if they wish to take them. | | | | | | | | | | | |

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| Daniel Mairs, Cox Petroleum Transport | Current meal period laws are in conflict as it pertains to the hazardous materials transportation industry. Our drivers can only stop in designated safe havens. | | | Our drivers' safety and the public safety are being hampered by forcing them to take their breaks at times that do not fit, or at times when there is no safe place to stop. | | | Our drivers typically work shifts that allow them to have adequate rest and meal periods between loads while waiting to load and unload. | | | | | | |
| Michael Lindeman, Valley Aggregate Transport, Inc. | The rule is "one size fits all", but it doesn't suit every industry. | | | | | | A driver with a load of hot asphalt or concrete cannot stop for lunch. Drivers are used to eating when the opportunity arises. | | | | Truck drivers are already restricted by law on hours of service. They are allowed 15 hours, portal to portal, with no additional time for meals. A mandatory lunch break can reduce a driver's earnings by over 1 hour per day. | | |

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| James Lankford, SYSCO | - We would like to allow our employees to take their meal periods when it suits their schedules. - Many employees would prefer to take their meal period after they have finished their physical work. | | | Public concerns of safety and convenience are adversely affected by the meal period laws. As a result, our drivers must stop driving during peak rush hour traffic to take a meal period, potentially blocking roads and freeway exits. | | | | | | | The meal breaks often interfere with a driver's ability to make timely deliveries. | | |

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| Sandra Forseth, SYSCO Food Services of Sacramento | - Because transportation industry workers sometimes cannot take their breaks because of road conditions, geographical location, or other issues arising out of the nature of their employment, this industry needs increased flexibility. - AB 2593 would have provided relief for transportation workers, but was vetoed. | | | | | | | | | | | | |
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| Eric Sauer, California Trucking Assoc. | Meal breaks and rest periods for truck drivers must take place at their discretion. A meal break rule that ignores freeway conditions and access to food and parking places truck drivers in a position where bureaucrats dictate when they should eat. | | | | | | | | | | | | |
| James Skiles, Grocery Manufacturers Assoc. | - Employees who choose to take a meal period would benefit from greater flexibility that allowed them to take the break when and where they desired to take them. - For long distance truck drivers who cross state lines, there appears to be no guidance as to how the meal period | - It is virtually impossible for grocery manufacturers to ensure employees take meal periods and record them accurately when those employees work in the field and not in a central location where they are supervised by their employer. This places an undue administrative burden on employers as employees are | | Truck drivers are regulated by DOT and/or CHP, so there should be no concern regarding the safety of these employees driving and making their own determinations regarding whether and when to take meal and rest periods. | | Some employers have policies stating they will discipline employees who fail to take their meal breaks. | Our employees do not want to be required to take meal periods; they prefer flexibility to work through lunch and complete their day earlier. Many employees prefer to eat while they drive from one store to the next. | | | The timing requirements of the meal and rest period rules as currently enforced by DLSE do not appear to allow employees the flexibility to combine the two 10 minute paid rest periods with the one 30 minute meal period to have a longer break. | | | |

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| | timing requirements apply to these employees (ie. do hours worked out-of-state count towards the 5 hour requirement?) | unsupervised and without any access to time clocks. - One potential solution for employers with field-based employees would be to create a presumption that if an employer has a written policy requiring compliance with meal periods, and the employee does not notify the employer that he/she has failed to do so, then the employer has complied with the law. | | | | | | | | | | | |
| Ronald Broberg, California Delivery Assoc. | Employees should be allowed to voluntarily take all or part of the break at times most convenient to the employee, including splitting a meal period over different periods during the day. | Employers should not have to ensure that its employees take breaks at a specific time for the entire time or without interruption. This requirement would have a devastating impact on the time-sensitive and expedited delivery industry. | | | | | Many drivers would prefer to take an on-duty meal period, which permits them to eat lunch while driving. | Employers should not be compelled to ensure that an employee actually takes such breaks if the employee chooses to forego them with the employer's permission. | | | | | |

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| Joe Matlen, Valley Farm Transport | With two income households now the norm in California, employees want more flexibility in how they take their breaks. | | | | | | Drivers have to be able to manage their time in a way that benefits them. | | | | | | |
| Glen Craig, Former CHP Commissioner | - The "one-size-fits-all" rule in relation to the state's transportation industry makes little sense. - Current law, Vehicle Code section 21718, only allows drivers to pull over on the highway in case of emergency. However, obeying the rigid meal rules can result in a citation for the driver. - California's law is uniquely inflexible regarding truck drivers. | | | Drivers are forced to pull over at specific times without regard to traffic, road conditions or how close they are to a safe stopping place. | | | | | | | | | |

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| Ed Rodriquez, Pepsi Bottling Group, Inc. | A requirement that employees begin their meal periods before the 5 th hour forces the employees to take meal periods at times and in locations they would not otherwise choose. Employees working a 10 hour shift would prefer to take their meal period in the middle of the shift, sometime between the 5 th and 6 th hour. | | | Our truck drivers are regulated by DOT and/or CHP, so there should be no concern regarding the safety of these employees driving and making their own determinations regarding whether and when to take meal and rest periods. | | We discipline employees who fail to take meal periods or take late or short meal periods without prior approval. This penalizes hardworking employees trying to do their jobs. | | | The rules should allow for a waiver of the second meal period for shifts of more than 12 hours. | | The necessity to track meal periods so precisely to determine whether a potential violation may have occurred imposes an enormous logistical burden on our front-line managers. | | |
| Mark Smith, Manager | As a service provider for the petroleum industry, we request more flexibility in the timing for the start of meal breaks. | | | | | | | | | | | | |

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| Leih Eghbal, Restaurant HR Manager | Our employees would like more flexibility to determine when they take their breaks. | Enforcement of the rule is cumbersome. Each day's payroll records must be scrutinized to ensure breaks have been taken. | | | | Employees are reprimanded if they do not take their breaks. | | | | | | | |
| Donna Rock, Restaurant Owner | Our industry would like to "waive" the time restriction of meal breaks. | | | | | We reprimand our workers for not clocking out or for coming back too soon. | | | | We reprimand our workers for not clocking out or for coming back too soon. | | | |
| Anonymous letter from restaurateur | The law should allow the employee a choice as to when to take the meal break. | | | | | | | | | | Requiring servers to take a meal break 5 hours into their shift will result in a reduction in tip income by almost 50%. | | |

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| Jeff and Laura Ambrose, Woodstock's Pizza | As a result of the recent rulings, we have implemented new policies: (a) eliminated all split shifts; (b) changed all shifts to be no more than 5 hours; (c) have a written waiver policy to cover unpaid breaks for those working 5, but less than 6 hours; (d) force employees to clock out for half-hour breaks; and (e) deny early-arriving employees the opportunity to clock in early. | | | | | | We are still trying to determine how to handle the unpaid meal break for our shift managers. One shift manager is responsible for all management issues during a shift, and, as a result, used to take breaks "on the clock." | | | | | | |
| Mike McLaughlin, Bazaar Del Mundo | Many of our restaurant employees dislike the rules because they are forced to take a break in the middle of their busiest periods. | | | | | | | | | | | | |

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| Jonathan Barnato, California Restaurant Assoc. | - DLSE's current interpretation requiring a meal period to be taken before the 5 th hour is severely burdensome on restaurateurs and detrimental to employees. - The rules should be revised to allow flexibility as to when an employee can take their meal period. | Restaurateurs should not be forced to ensure employees take a full meal period. | | | | To avoid liability, some employers are having to adopt policies such as shortening the shifts of all employees to 5 hours or less to ensure they do not run afoul of the rules. Some employers have adopted policies giving an employee a verbal or written reprimand for clocking in early. | | | | | - Tipped employees want to be able to maximize their income by having the flexibility to decide when to take their meal period. - Restaurateurs' profits are decreased as they must employ a larger workforce to have extra employees just to break other employees. | | |
| Carolyn Goldsberry, Lawry's Restaurants, Inc. | Employees need more flexibility in deciding when and if a meal break is needed. | | | | | | | When shifts are 6 or 6.5 hours, employees are not interested in a meal period, which simply prolongs their time at work. | | | The requirement for a meal period takes money away from tipped employees. | | |

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| Jane Flynn, Registered Nurse (with signatures of 41 health care workers) | In the intensive care unit, even with assigned meal breaks, unpredictable events happen on a daily basis that can change the entire schedule. We want to be able to eat when there is time and there is someone to safely relieve us. | | | | | | | | | | | | |
| Gail Blanchard-Saiger, California Hospital Association | - The timing of the meal period may be an issue for workers working 8 and 10 hour shifts where the employee takes the meal period at a time that results in a work period of more than 5 hours upon return from the meal period. Issues also arise when a 10-hour employee who | | | | | Employers have adopted policies that require discipline where employees fail to follow the rules. | In a hospital setting, there are situations that may prevent an employer from providing an off-duty meal period within the first five hours of work every day: (a) where the nature of the work never permits an off-duty meal period; and (b) positions that may allow for an off-duty break, but, on some | | Due to the prevalence of 12 hour shifts in the health care industry, the issue of scheduling meal periods where an employee has waived one of the two meal periods has great significance. Based on a now-withdrawn DLSE opinion letter, on a 7 a.m. to 7 p.m. shift, where the employee waives one of the meal | | | Does the law require one meal period for each five-hour block of time worked? | |

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| | arrives a few minutes early or stays a few minutes late will exceed 10 hours and technically be entitled to a second meal period. - Need guidance on timing of rest periods for 12 hour shifts. | | | | | | occasions, that may not be possible or in the best interest of patient care. | | periods, the meal period cannot be taken between noon and 2 p.m. | | | | |
| Petition submitted with California Hospital Association's Written Comment (478 signatures) | The current status of meal and rest period regulations prevents employers from offering flexibility and does not recognize the realities of differing work environments, such as in a hospital. | | | | | If employees do not take meal and rest breaks according to strict rules, they may be disciplined. | | | | | | | |

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| Shelly Schlenker, Catholic Healthcare West | - Strict nurse-patient ratios, combined with fluctuating patient census, result in additional limitations on when an employee can take a meal period. - For 8 hour shifts, the rule should allow the meal period to be taken between the 2 nd and 6 th hour worked; for 12 hour shifts, the meal period should be taken between the 3 rd and 9 th hour worked. | Some interpretations of the meal period rule suggest that employers have to "police" their employees and force them to take a meal period. It is unclear what our responsibility is when a worker voluntarily delays, shortens, or forgoes taking a meal period. We propose that DLSE adopt the interpretation set forth in <i>White v. Starbucks</i> , 2007 WL 1952975, in which the court clarified that a penalty is not owed if the employee voluntarily chooses to forgo a meal period. | | Staff performing patient care have had to leave a patient because the 5 th hour arrived and they were forced to take a meal period. | | | | | | For staff who work 12 hour shifts and waive one of their two meal periods, they are precluded from taking the meal period in the middle of their shift, which is between the 5 th and 7.5 th hour. | | It is unrealistic and practically impossible to require employees to clock in and out for exactly 30 minutes. The law should be clarified to state that a penalty would not be owed if the employee received at least 25 minutes of a meal break. | | |

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| C. Kelly Evans; Sarah Riegelsberger, Sutter Health | DLSE's interpretation that an employer has an affirmative obligation to ensure that employees do not work more than 5 hours without taking their meal break is too constraining on employees' freedom to choose. | | | Employees involved in providing direct patient care cannot leave their work assignments to take their meal periods when they have worked 5 hours, since doing so would place the patients' well-being in jeopardy. | | | | | We need clarification on the requirements regarding waiver of meal periods for employees who work more than 10 hours and more than 12 hours. Which meal period can be waived? | | | | |
| Jerry Bass, Lamps Plus | | | | | | | | | | | Our salespeople are commissioned. Under current rules, a salesperson often is forced to interrupt his/her sale with a customer and remove him/herself from the sales floor for a meal break. As a result, the sale and commission are lost. | | |

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| Sharon Overton, Lamps Plus | Our employees are very angry as their right to take their meal periods when they choose has been taken away from them by these rules. | | | | | We have to give infraction notices leading to a suspension to our workers when they do not adhere to the 5 hour rule. | | | | | Our salespeople are having their sales interrupted which sometimes cause them to lose a sale. | | |
| Linda Clayton, Lamps Plus | All employees are scheduled to take their lunch period before the 5 hours. However, a sales employee can begin a sale, which puts the employee beyond the five hours. | | | | | We are disciplining employees for not adhering to the meal period rules. Employees who return to work prior to 30 minutes are receiving infraction notices and suspensions. | | Employees are unhappy that they must take vacation time if they want to leave early instead of waiving their meal period. | | Time clocks have been changed so that employees cannot clock back in once they have clocked out for lunch before 30 minutes. Employees who return to work prior to 30 minutes are receiving infraction notices and suspensions. | When the time spent with the customer is shorter, the employee does not get the opportunity to see what else the customer might want, thus affecting the employee's paycheck. | | |

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| Domaine Carneros (letter signed by 14 people) | As winery workers working 10-hour days, we do not enjoy being forced to take our meal period at 10:30 or 11:30 a.m. Please consider removing the requirement that the meal break be taken before the 5 th hour of work, or at least allowing groups to vote on alternate meal break times. | | | | | | | | | | | | |
| Jeff Flint, CALSAGA (California Assoc. of Licensed Security Agencies, Guards & Associates) | We believe the IWC should craft meal break rules that are appropriate to the nature of the work in a given industry. | In many cases, a single security officer is the only personnel at a protected site. As a result, it is difficult administratively for employers to ensure employees are in compliance with meal-break rules. | | | | | - Due to the nature of private security work, the requirement for an off-duty meal period is not practical from a public safety, homeland security, or administrative perspective. - Our employees prefer to take an on-duty meal break. | | | | | | |

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| Jerry Haleva, Sergeant Major Associates (on behalf of National Armored Car Assoc.) | | | | Armored car guards are trained to limit the time they are at a single location and to vary their stop times to minimize the potential for armed robberies. | Much of the industry is covered by CBA's, which have terms and conditions regarding on-duty meal periods. | | - The armored car industry is unique in that the employees cannot leave the vehicle unattended, nor can they risk leaving the vehicle in a public area for a meal period. - Armored vehicles do not have windows that roll down. Thus, the engine must be kept idling to provide cooling/heating during meal periods, which contributes to air pollution. | | | | | | |
| Gerald Desmond, Desmond & Desmond (on behalf of California Association of Licensed Investigators) | One of the most effective investigative tools is the use of discrete surveillance. An effective surveillance can be severely compromised and even destroyed by a rigid meal period requirement. | | | | | | | | | | | | |

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| Will Sanford, Futures Explored, Inc. | As a not-for-profit organization providing services to developmentally disabled individuals, the meal break rules has created challenges since most staff work individually at different facilities. The current rules limit the opportunities for our clients to be active in their communities, which require our support services. | | | | | | | Most of our employees choose to sign a Meal Break waiver. | | | | | |

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| Mike Sweeney, The Arc | | | | | | | It is nearly impossible to provide community based services while protecting the health and safety of the people we serve without the flexibility of paying staff through lunches at times. Our staff prefer the option of working through a paid lunch in order to leave work a half hour earlier. | | | | | | |
| Barbara M. Contra Costa ARC | As a nonprofit organization serving people with developmental disabilities, we are concerned about the lack of flexibility in the break rules in wage orders 4, 5, and 15. | | | | | | | | | | | | |

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| Nancy Batterman, Employment & Community Options | | | | | | | In the case of off-site community-based services to disabled adults, the logistical challenges as well as the expense of providing a back-up worker during the required meal period are considerable. There is no practical way to cover off-duty meal periods. | | | | | | |
| Michael McCoy, California Rehabilitation Assoc. | | | | | | | In the case of off-site community-based services to disabled adults, the logistical challenges as well as the expense of providing a back-up worker during the required meal period are considerable. There is no practical way to cover off-duty meal periods. | | | | These service agencies do not have the fiscal ability to pay a worker during a break and another worker for the same period to cover the work that must be done. | | |

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| Robert Marks, Rogers Jewelry | | | | | | | | | | | Our employees resent losing personal income because they were forced to take a meal break at an inopportune time. | | |
| Terry Post, Shop Steward, Teamsters Local 853 (represents truck drivers in the ready mix/concrete industry) | | | | | Our CBA addressed the issue of missed meal breaks, based on negotiations. However, the State has now implemented new meal break rules. Employers do not know which to follow: the CBA or the State rules. | | Concrete is a perishable commodity. We do not need inopportune meal breaks to interfere. | | | | | | |
| Ernie Yates, Teamsters, Automotive & Allied Workers, Local No. 665 (representing parking industry workers) [2 different letters] | | | | | An off-duty meal period is provided for under the terms of our CBA. The CBA also provides that the employer and the employee can voluntarily agree to a paid on-duty meal period. | | For many decades, the industry practice has been to allow employees that did not want a meal period to eat and rest while on-duty, as there is significant down time. | | | | | | |

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| Richard Puccinelli, California Parking | | | | | According to industry practice and the CBA, employees were allowed to take on-duty meal periods. Meal periods should be governed by the CBA. | | According to industry practice and the CBA, employees were allowed to take on-duty meal periods. | | | | | | |
| Tim Leonodakis, City Park | | | | | According to industry practice and the CBA, employees were allowed to take on-duty meal periods. Meal periods should be governed by the CBA. | | According to industry practice and the CBA, employees were allowed to take on-duty meal periods. | | | | | | |

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| John Miller, Cox, Castle, Nicholson (on behalf of Associated General Contractors of California) | Regulations should distinguish between the seriousness of deliberate violations and inadvertent, technical violations. | | | | In light of <i>Bearden v. Borax</i> , DLSE should clarify that: (a) section 11 of Wage Order 16 governing rest periods remains effective in its entirety, including its exclusion of claims under CBA's; and (b) that "equivalent protection" means typical CBA provisions addressing rest periods and in effect at the time the wage order was adopted. | | | | | | | | |

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| Jon Preciado, Plaster Tenders of Southern California, Local Union 1414 | | | | | <ul style="list-style-type: none"> - We take exception to the recent ruling in Bearden v. Borax. All matters of collective bargaining that result in a legitimate CBA should be settled by the parties that negotiated the CBA. - We would not welcome nor encourage outside intervention from others, including DLSE, who would intrude in collectively bargained matters. - We encourage DLSE to adopt rules which clarify that unions and employers will maintain their ability to negotiate and settle their disputes within the parameters of their CBA. | | | | | | | | | |

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| Mark Pawlicki, Sierra Pacific Industries | The regulations do not provide an opportunity for employees to ask for or be granted flexible scheduling to accommodate unique circumstances . | For employers, the penalty for taking a late meal period or failure to take a second meal period is the same as not taking a meal period at all. This provides no incentive for an employer to correct a late lunch period. | | | | | There are many times when a paid on-duty meal period should be allowed when an employee and employer mutually agree to one. - Truck drivers often eat lunch while their trucks are being loaded, which might not be during the designated time period. - Employees prefer getting home earlier rather than taking a formal meal break. | | Employees should be allowed to waive a second meal period even after 12 hours. | | For example, we are subject to a full penalty if a millwright works past his scheduled lunch hour to fix a broken machine, which would force the entire mill to be idle. | | |

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| Ms. DaConceicao | | | | | | Companies are establishing policies to discipline employees who fail to punch out within the first five hours of work or fail to document an off-duty meal period. Why do we have this law if you can get fired for something that is set up to protect the workforce? | | | | | | | |
| Gregg Cook, Government Affairs Consulting, (on behalf of the Greater California Livery Assoc.) | Absent an exemption to the requirements, some limousine companies are eliminating employee drivers and contracting for independent contractor drivers. | Because our drivers and vehicles are under the command of the client and/or security personnel, we cannot guarantee that our drivers will be provided off-duty meal and rest breaks. | | | | | Limousine companies are charter-party carriers regulated by the CA Public Utilities Commission. Oftentimes, the driver may not actually be driving the vehicle, but still on-duty and available to the client upon request. | | | | | | |

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| Steve Williams, Arrive in Style Limousines, Inc. | | | | | | | Chauffeurs usually have a considerable amount of "down time" where they are just sitting and waiting and can eat and rest while getting paid. | | | | | | |
| Rose Huerta-Walker, HR Professional | | | | | | Our managers discipline employees who choose not to take their breaks or meal periods or wish to take them earlier or later than is allowed by law. | | | | | | | |
| Carla Bange, HR professional | To change to a 6 hour window in which to take the meal period would reduce the burden on our employees and staff. | Supervisors, leads, managers and payroll personnel all have additional responsibilities to ensure compliance. | | | | | | | | | | | |
| Kim Keating, Payroll Manager | | It is very tough and time consuming to force people to take a lunch. | | | | | | It would be nice if employees could waive their meal periods. | | | | | |

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| Isabella Schwarzinger, Advanced Employment Services, Inc. | The law should give the employee and employer an opportunity to work out a flexible break schedule that works for both of them. | | | | | | | | | | | | |
| Loretta Hanson, Barger Harley-Davidson | The laws need to be flexible enough to accommodate more employee needs to help them achieve a balance between work and personal demands. | | | | | | | | | | | | |
| Marti Fisher, California Chamber of Commerce; California Employers Coalition on Meal and Rest Periods | | -DLSE's interpretation requires employers to police its workforce and watch the clock to ensure that a meal period is taken at the prescribed time. - Employers are unfairly held liable for independent employee actions. - Employers should not be required to force employees to | | | | | - DLSE's interpretation of the on-duty meal period provision is so narrow and constraining that it cannot be used in most workplaces. - We ask for guidance on the situations in which on-duty meal periods are permitted as well as a more realistic standard for allowing them. | A meal period waiver differs from an employee's choice to forgo a meal period. A waiver applies to an employer's duty to provide an employee with a meal period. In contrast, a decision by an employee to forgo a meal period provided to him/her is outside of the waiver | | Employers are being sued for even minor violations, such as employees returning 5 minutes early from lunch. | | - There is a question of when a meal period is to be provided. If an employee works an 8 hour shift and takes a meal period after 2 hours of work, is the employee then entitled to another meal period after working 5 more hours even though the total workday is 8 | |

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| | | <p>take breaks.</p> <ul style="list-style-type: none"> - The plain meaning of Labor Code section 512 requires an employer to "provide" by "making available", not "ensure", a meal period. This is supported by legislative intent, IWC intent, and recent case law (Murphy, Cicairos, White, and Perez). - Time off between split shifts should be deemed to satisfy an employer's duty to provide a meal period. It is unclear when a meal period must be provided to an employee working a split shift. | | | | | <ul style="list-style-type: none"> - On-duty meal periods should be allowed for oil refinery workers, healthcare industry workers, and manufacturing workers. - Employees working more than 10 hours a day should be allowed to have 2 on-duty meal periods per day. The exception for an on-duty meal period applies independent of the waiver and without regard to the length of the work period. By agreeing to and taking an on-duty meal period, an employee is not waiving or even forgoing a meal period. | provision. | | | | <p>hours?</p> <ul style="list-style-type: none"> - Only 1 meal period should be provided to an employee employed for a work period of no more than 10 hours in a day, regardless of when the employee takes a meal period. | |
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| Frank DeSmidt, Milpitas Chamber of Commerce | The laws need to be flexible enough to accommodate circumstances where it is not feasible or safe for an employee to take an off-duty break. | | | | | | | | | | | | |
| Cindy Roth, Greater Riverside Chambers of Commerce | | -DLSE's interpretation requires employers to police its workforce and watch the clock to ensure that a meal period is taken at the prescribed time. - Employers are unfairly held liable for independent employee actions. - Time off between split shifts should satisfy an employer's duty to provide a meal period. | | | | | DLSE's interpretation of the on-duty meal period provision is so narrow and constraining that it cannot be used in most workplaces. | | | Employers are being sued for even minor violations, such as employees returning 5 minutes early from lunch. | | | |

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| Dennis Frank, Southwest California Legislative Council | Many employees ask for flexibility in work schedules to take care of personal matters. | <ul style="list-style-type: none"> - The ruling in Murphy causes strict liability for the employer if an employee purposely takes advantage of the law. - The law exposes every employer to a lawsuit since it is almost impossible to monitor every employee every day. - Companies may have to restructure hourly shifts to 5 hours or less to limit exposure to liability. - We recommend DLSE follow the court's interpretation in White v. Starbucks. | | Forcing employees to take meal periods at or before the 5 hour mark is impractical and/or dangerous, as in the healthcare industry (while tending patients) or transportation industry (pulling off the road). | | Even with company policy on mandatory meal breaks and/or verbal and written enforcement of meal periods, employees can take advantage of the law by not taking the breaks or "forgetting" to clock out on a time card. | | | | | | | | |

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| Lydia Marin | We are adults and know when we need to rest, need food in our stomach, and how to meet priorities on the job. There are other laws in place to ensure fair and equal rights in the workplace that would cover this issue. | | | | | | | | | | | | |
| Ron Cleveland; David Werner; Nabors Drilling; Nabors Well Services | - Operations on oil and gas wells are often conducted on a continuous 24-hour basis. Although the nature of the work usually allows for breaks during the day, the unpredictability of well conditions makes it difficult to schedule those breaks. - There should be an exception when an "off-duty" meal period conflicts with a | | | - DLSE's enforcement position actually undermines worker safety in our industry. - The oil and gas well industry is heavily regulated by both state and federal OSHA laws. Leaving a well unattended presents worker safety and environmental risks. - It is unsafe and environmentally irresponsible to | | | - Oil and gas wells are often located in remote places, making it impractical for employees to leave the worksite for breaks. - DLSE's current enforcement position is that an "on-duty meal period" is a "waiver" so that any required "second" meal period must be taken. It is illogical to presume that the nature of the job can | | | | | | |

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| | <p>competing state or federal law. - Either an off-duty or on-duty meal period should be considered compliant if it is provided at any time during 6 hours of work.</p> | | | <p>shut down a rig several times a day to provide simultaneous off-duty meal periods. - Staggering meal periods increases safety risks as each employee is in a safety-sensitive position and is uniquely trained to perform his specific job function.</p> | | | <p>prevent an employee from being completely relieved of all duty during a "first" meal period, but not a "second." - A paid on-duty meal period should qualify as a meal period taken and not be construed as a waiver. - The law should permit an employer to require an "on-duty meal period" agreement as a condition of employment. - If an employee is completely relieved of all duty, the meal period should be considered "off-duty", even though it is impractical for employees to leave the job site due to the remote location.</p> | | | | | | | |
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| R. Brian Dixon, Littler Mendelson [2 different letters] | - The timing of meal periods becomes an issue on 10 hour shifts. A strict reading of the Labor Code implies that the first meal period must fall exactly at the 5 th hour, and the second must fall exactly at the 10 th hour to avoid an employee working more than 5 hours after the first meal period. - DLSE should consider adopting a de minimus standard to irregular and small increments of work not being counted as work time. | The current interpretation to affirmatively force an employee to take a meal period is often contrary to the employees' interests. | | | | Because the timing and length of meal periods are often within the control of the employee, employers must enforce meal period rules through the disciplinary process. | - Employers have employees who do not want a meal break as it would require them to work 30 minutes later. - DLSE's position is that an on-duty meal period is a "waiver", and that the employee cannot then have a second, on-duty meal period if the employee works more than 10 hours. This position is puzzling particularly where an employee works an on-duty meal period because there is no one else to fill the role. | | | - Employees may be disciplined for returning from lunch too early to ensure that the employee will take a full meal period in the future. - DLSE should consider allowing rounding to apply to the timing and duration of meal periods. | | There is an issue of whether a meal period occurs within 5 hours after the start of the shift or after the end of the last meal period. | |

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| Ken de Vries, All Star Rents | | | | | | | | | | | Our California locations are so challenged and financially burdened by the break rules that we are laying off California employees and not replacing those lost through attrition to keep our labor costs down to be competitive and profitable. | | |
| John Wooten, All Star Rents | I am writing in support of more flexibility in the rules. | | | | | | | | | | Employees see that their level of service is constantly being compromised in order to adhere to the rules. | | |
| Marty Archer, Christian Community Credit Union | The law should not force employers to make employees to take meal breaks at a specific hour. | | | | | | | | | As the payroll accountant, it is my responsibility to ensure that a lunch penalty is awarded to each employee who blatantly and purposely punches out to lunch a minute late so as to incur a lunch penalty. | | | |

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| Lewis B., C&H Sugar Co. | | | | | | My company now wants to terminate workers who forget to clock back in from their meal break. If you forget to clock back in, the company refuses to pay you for the 4 hours after lunch. | | | | | | | |
| Bill Dombrowski, California Retailers Assoc. | The law should be sufficiently flexible to recognize the applicability of normal rounding standards. | A key question is what does the term "provide" mean? We suggest utilizing the principles articulated in White v. Starbucks (makes the meal period available and does not force an employee to forgo the meal period. | | | | Employers are forced to discipline and terminate employees who fail to comply with the meal period rules. | The law is construed to treat it as an on-duty meal period when an employee remains on the employer's premises, regardless of whether the store may be in an unsafe area or the employee has no other place to eat. This should not be the case. | Standards should allow employees the ability to waive meal periods more easily either on a day-by-day or ongoing basis. | - The law should presume that the meal period is waived and no violation occurs unless an employee on a 10 hour shift specifically requests the opportunity to take a second meal period. - The law should not require a second meal period when the employee drifts a few minutes over 10 or 12 hours due to arriving a few minutes early or staying a little late. | If an employee is offered the opportunity to take a 30-minute meal period, but begins it late or ends it early, it is unfair and unrealistic to impose a sanction. | The rules interfere with the ability of retailers to staff employees in a manner that promotes productivity and efficiency. | | |

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| Vickie Bermea, EMC Planning Group | Current rules make it almost impossible to allow employees the flexibility they desire. | | | | | | | | | | | | |
| Weslie Pettus, Knobbe, Martens, Olson & Bear | | | | | | | | The laws should be flexible enough to accommodate circumstances where it is not feasible or desirable for an employee to take a break. | | | | | |
| Mary Kelly, Manresa | Both employees and employers would be helped by relaxing the rules. | | | | | | | | | | | | |
| Paso Robles Heating and Air Conditioning, Inc. (Letter signed by 6 employees) | There are times when employees may want to delay taking a break until they complete a service call. | | | | | | | | | | | | |
| Kathryn Graf, Scandinavian Designs | Staff would like the flexibility to take breaks at other times, not take them, or combine times. | | | | | | | Please consider including employee requests to not take a lunch. | | | | | |

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| Linda Ludwiczak, TLC Services Group, Inc. | Please consider changing the current rules to allow more flexibility. | | | | | | | | | | | | |

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| Barbara Biglieri, California Assoc. for Health Services at Home | Wage Order 15 exempts personal attendants from meal periods. However, this is unclear due to Bearden v. Borax. | The Labor Code, Wage Orders, and case law do not compel the employer to force the worker to take a meal period. | | | | | - "The nature of the work" needs to be clarified to ensure that this includes home care services. On-duty meal periods are critical for the home care industry, as employees are working unsupervised, off-site, in a person's home, and it can be unsafe for the employee to leave the premises while taking the break. - Bearden v. Borax decision makes it unclear as to whether on-duty meal periods are even allowed anymore. - Employees should be allowed to have more than one on-duty meal period per day. | | There is conflict between Labor Code 512 and Wage Orders 4 and 5 regarding the waiver of meal periods, when an employee is subject to a second meal period. Wage Orders 4 and 5 allow the waiver of "one of their two meal periods" whereas the Labor Code states that "the second meal period may be waived...only if the first meal period was not waived." Employees should have the right to waive the meal period of their choice. | | | | |

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| California Advocates, Inc. (on behalf of the California Employment Law Council) | | <ul style="list-style-type: none"> - The paramount concern is the need to clarify the obligation on employers to "provide" a meal period. - The interpretation that employers have an affirmative obligation to ensure that employees actually take meal periods with no work performed during this time turns employers into "lunch police." - We believe that the plain meaning of the word "provide" is to make the meal period available, and to do nothing to discourage the use of the meal period. This interpretation is supported by White v. Starbucks and Murphy v. Kenneth Cole. | | | | The rules create the necessity for employers to deny requests to forego meal periods and to adopt harsh rules, including termination, for employees who do not comply. | | <ul style="list-style-type: none"> - The rules result in a lack of flexibility for employees who wish to forego their meal periods on specific days to attend to personal business. - We believe the language of Labor Code section 512(a) suggests that an employee may forego meal periods (language about waiver of second meal period only if the first meal period was not waived). | | Employees should be free to decide to take less than the full 30 minutes for their meal period. | | | |

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| Teresa Hodgson | I would appreciate the ability to take my unpaid meal period when it is convenient for me, not when it is mandated after a certain time by law. | | | | | | | | | | | | |
| Jay Gilberg, ABCOW Staffing | Employees want flexibility on when they take their break, often so they can conduct personal matters at a time that is most convenient for them. | | | | | | | | | | | | |
| Brittany Koper, Trinity Broadcasting Network | The current rules are not practical for real life situations. | | | | | | | The rules do not provide for emergency situations or employees who would rather work through a meal period. | | | | | |

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| Kim Hansen, Provost & Pritchard | Employees want to take their meal periods when it is convenient for them to do so, not because of an arbitrary 5 hour rule telling them they must need a break. | | | | | | | | | | | | |
| Stanley Levy, Manatt, Phelps & Phillips | | There is no better, more legally sound position than the opinion in White v. Starbucks, where the court concluded that employers are only required to offer meal breaks, without forcing employers actively to ensure that workers are taking the breaks. | | | | | | | | | | | |
| William Rainey, Longs Drugs | | - The plain meaning of Labor Code sections 512 and 226.7 require an employer to "provide", not "ensure", a meal period. - In Murphy v. Kenneth Cole, | | | | | | | | | | | |

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| | | <p>the California Supreme Court consistently referred to the occurrence of a violation when an employer forces an employee to miss a meal period.</p> <ul style="list-style-type: none"> - Inconsistent wage orders that do not adhere to the statute have created confusion regarding the meaning of "provide". The wage orders do not use the term "provide" when discussing the first meal period, but do use that term regarding the second meal period. Because the wage order contravenes the language of the governing statute, it is invalid. - Cicairos v. Summit Logistics has created confusion on the meaning of "provide." | | | | | | | | | | | |

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| Gabrielle Kirkland, California Grape & Tree Fruit League | It would be more realistic to create a sliding scale of time limits that allow for the practical difference between 8 hour and 10 hour shifts. | - Employers should not be required to force employees to take breaks. - Employers are unfairly held liable for independent employee actions. | | | | | - DLSE's interpretation of the on-duty meal period provision is so narrow and constraining that it cannot be used in most workplaces. - The definition of "the nature of the work" is unclear. | A meal period waiver differs from an employee's choice to forgo a meal period. A waiver applies to an employer's duty to provide an employee with a meal period. In contrast, a decision by an employee to forgo a meal period provided to him/her is outside of the waiver provision. | | Employers are being sued for even minor violations, such as employees returning 5 minutes early from lunch. | It is common for a packinghouse operation to hire an additional employee with the sole duty to monitor the time-clock to ensure that co-workers clock in and out at the appropriate time. | | |
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| Dennis Frank; Diane Sessions, Economic Development Corporation | Forcing employees to take breaks at or before the 5 hour mark is impractical and/or dangerous, as in the healthcare industry or transportation industry. | - The rule causes strict liability for the employer if an employee purposely takes advantage of the law. - Employer is now responsible for policing every employee daily to make sure they clock in/out or report their meal periods. - We recommend that DLSE follow White v. Starbucks and require the employer to provide the opportunity to take the meal period. | | | | | | | | | | | |
| Ronald Summers, California Portland Cement Co. | | - Employers should not be "forced" to make employees take a meal period. - Time off between split shifts should satisfy an employer's duty to provide a meal period. | | | | | On-duty meal periods should be expanded to apply in more situations. | | | | | | |
| Rael Silva | | | I have witnessed how businesses try | | | | | | | | | | |

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| | | | to use any way to save money at the cost of workers' health such as making us work for 8 hours with no time to eat. | | | | | | | | | | |
| Evelyn Caicedo | | | | | | | | | | | | | I don't want this to keep happening. |
| Naomi Nakamura | | | | | | | | | | | | | We need to support the gains we made over the years. |
| Jason Lockwood | | | Workers are already not getting the breaks that are currently required by law. | | | | | | | | | | |
| Alex Felsing | | | They leave too much room for potential abuse. | | | | | | | | | | |
| Sonya Mehta | | | Breaks are a human right. | | | | | | | | | | |
| Marcela Noguera | | | Everyone has a right to their lunch break. | | | | | | | | | | |
| Oscar Sin | | | On my break, I use it to eat and take a rest. | | | | | | | | | | |

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| Dianne Enriquez | | | There are too many businesses that deny workers break time with the law the way it is right now. If anything, there should be greater efforts to strengthen laws that protect workers and prohibit owners from taking advantage of them. | | | | | | | | | | |
| Janice Kha | | | | A nutritional/lunch break is vital to one's daily life. | | | | | | | | | |
| Gren | | | It's our right because we need to rest. | | | | | | | | | | |
| Naeemah Taylor | | | | Breaks allow an employee to relieve stress, eat, and gain composure. | | | | | | | | | |
| Georgette Muse, Bus Driver | | | | I drive long hours and need to stretch my legs and have something to eat. | | | | | | | | | |

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|-------------------------------|--------------------------------|-------------------------|--|--|------------------------------|--|---------------------|---------------------------------|----------------------------------|-------------------|--------------|------------------------|------------------|
| Danita Hayes, Bus Driver | | | | I need my breaks because it makes me a safer driver. | | | | | | | | | |
| Davena Collins, Bus Driver | | | Before the current law, I never had regular rest or lunch breaks. I often had to work an entire 8 to 10 hour shift without having an opportunity to eat. | | | | | | | | | | |
| Edgar Delgado, Bus Driver | | | If they take away our lunch breaks, then we will have no time to eat. | | | | | | | | | | |

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| Coleeco Walker, Bus Driver | | | | I have a background in the medical field. From the repetitive motion, you can accumulate restless leg syndrome in a job that involves your legs. You can also increase your chances of getting arthritis. Breaks and lunches are needed to increase health and longevity. | | | | | | | | | |
| Sharon Crawford, Bus Driver | | | | Dealing with the public is a constant stress. I need to take a break in order to continue to drive safely. | | | | | | | | | |
| Tanan Bryant-Birdsong, Bus Driver | | | | During the course of my route, it becomes stressful and a break makes it possible for me to continue through to the end of my route. | | | | | | | | | |

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| Jacqueline Lemelle, Bus Driver | | | | As I drive, I work with my knees and legs in traffic as well as my eyes. I need my break and lunch to help me to regroup myself mentally. | | | | | | | | | |
| Quinn Kelly, Bus Driver | | | | It is very uncomfortable staying in the seat without a break all day. Your concentration and alertness suffers. | | | | | | | | | |
| Carl Anderson, Bus Driver | | | | Drivers have constant stress. We need a break to recharge. | | | | | | | | | |
| Clemmie Bell, Bus Driver | | | | My occupation revolves around safety and punctuality. Without breaks, many problems will occur, such as unexpected restroom breaks as well as problems from eating at a traffic light. | | | | | | | | | |

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| Angela Smith, Bus Driver | | | | Working with the public is stressful. Breaks are important to give us time to regroup so you can have a positive attitude. | | | | | | | | | |
| Brenda Gamble, Bus Driver | | | I almost never get a proper lunch break. | The constant stress of working with the public and dealing with traffic can be overwhelming at times. | | | | | | | | | |
| Theresa Bender, Bus Driver | | | | We need lunch breaks to eat and regroup to get ready for the stress of the job. | | | | | | | | | |
| Dessie Avery, Bus Driver | | | | Everyone needs a break from the stress of work in the office or out on the road driving. | | | | | | | | | |
| Derrick Bailey, Bus Driver | | | | Dealing with the public is stressful. I need to rest so I can drive safely. | | | | | | | | | |

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| Delia Brazil-Pitchford, Bus Driver | | | | Being a school bus driver can be very stressful. Having breaks can soothe the nerves. | | | | | | | | | |
| Maurice Davis, Bus Driver | | | | We need rest to help relieve the stress from driving and dealing with the public. | | | | | | | | | |
| Deidra Robinson, Bus Driver | | | | If they take lunch away, there will be a lot of accidents because we will be tired and sleepy. | | | | | | | | | |
| Katrina Caldwell, Bus Driver | | | | I depend on my lunch breaks to allow me to regroup and get the rest needed to recharge. | | | | | | | | | |

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| Kelly Hewitt, Student | | | Do not weaken or make "more flexible" for the low-income workers who depend on clear, enforceable laws. Some workers do not know their rights and do not have a good relationship with their employers to arrange for flexible schedules. | | | | | | | | | | |
| Miguel Vargas, Safety Engineer | How about rewarding employees for taking their meal and rest breaks as required? The reward could be 10 to 15 minutes of flex-time for each week that they behave, and allowing them to use that time for family affairs. | | | | | | | | | | | | |

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| Jennifer Haylett, Intern | | | It is important for all workers to be guaranteed the right to take a lunch if they work 6 or more hours, particularly for older workers and pregnant women. | We cannot rely on companies to ensure that their workers have the necessary working conditions needed to take care of their physical and mental health. | | | | | | | | | |
| Scott Steelman, Organizer/ Business Rep., Local 340, IBEW | | | Flexibility will lead to more lawsuits as there will be people getting fired or laid off because they are taking a break while their coworkers do not. | I know that to stay focused, productive, and safe, I need my lunch. | | | | | | | | | |
| John Kitos | | | | As a machinist in a machine shop, I need my breaks to give me a respite from the intense labor and concentration required of my job. | | | | | | | | | |
| Debra Sudo-Marra, Legal Aid Foundation of Los Angeles | | | - From my experience at our self-help clinics, workers either could not demand breaks out of | A change to make the law more flexible would result in an increase in injuries suffered by workers, in | | | | | | | | | |

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| | | | <p>fear of retaliation or did ask their employers, but were denied a proper rest or lunch break. Often workers were not even aware of their right to a break because no one else in the company received such breaks. These complaints came from workers in low-wage industries.</p> <p>- If so many workers currently are unable to enforce their rights to guaranteed breaks, providing employers with loopholes under the guise of "flexibility" would only increase the percentage of violations.</p> | <p>costs for businesses, and of risk to public safety if employees in certain industries do not take meal periods.</p> | | | | | | | | | |
| Jose Tello, | | - The position of | - | | | | | | | | | | |

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| Los Angeles County Neighborhood Legal Services | | the court in White v. Starbucks, not only ignores established precedent, but also overlooks the realities of the workplace. Only employers have the power and authority to arrange schedules to provide for meal periods. Thus, the legal burden should fall on employers to ensure that workers take their meal periods. - Proving that a worker was forced to forego his meal periods would be too high an evidentiary standard to meet. | Unfortunately, in low-wage industries, employer violations of the break laws are prevalent. Further weakening the current law under the guise of giving workers "flexibility" will result in even more employer abuse and in endangering the health and safety of workers and the general public. - It is incredible that a worker who does not know he has a right to a rest break and for that reason does not ask the employer if he can take rest breaks, will lose his claim unless his employer affirmatively told him that he could not take his | | | | | | | | | | |

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| | | | breaks. | | | | | | | | | | |
| Parquette Hamilton, Customer Service Representative | | | | My breaks provide me the opportunity to remain rested and refreshed because taking customer call for 8 to 10 hours a day can be stressful. | | | | | | | | | |
| Penelope Stokes, Café Manager | | | | Standing on my feet most of the day is hard. I am also a diabetic and need my breaks to eat and rest. | | | | | | | | | |

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| Angie Wei, California Labor Federation | | The law on lunch breaks is clear. Employers must provide a 30 minute meal period. This is a clear and easily enforceable rule that protects workers from employer intimidation and gives employers simple record-keeping requirements. | - Workers need enforceable protection to ensure employer compliance. If enforcement is weakened, routine violations of break rights will again be standard operating procedure. - All workers deserve time to eat and rest without intimidation or fear of reprisal. | - Health experts agree that workers need regular breaks to prevent injuries to themselves, co-workers, and the public caused by repetitive stress, hunger, and fatigue. - Workers who work with chemicals, pesticides, excessive heat, and heavy machinery are particularly at risk if employers are no longer required to provide breaks. | | | The law permits on-duty lunch breaks if required by the nature of the work and agreed to by the employee. | - Current law strikes the right balance between flexibility and worker protection. The law already allows lunch breaks to be waived by mutual consent for shifts of fewer than 6 hours. - Workers can request "make up time" if they need to leave early and can work extra hours later in the week without accruing overtime. | | | | | - The Labor Agency does not possess the authority to change the law. - Recent court decisions, such as Murphy, protect workers and should not be overturned to help corporate lawbreakers. - The Labor Commissioner should be protecting workers' rights, not trying to undermine them. |

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| Robert Balgenorth, State Building and Construction Trades Council | - The current requirements already allow adequate flexibility for our industry. - When the IWC adopted Wage Order 16, the IWC concluded that permitting construction workers to work for more than 5 hours without a meal break was not consistent with employee health and welfare. | | If individual, unorganized construction workers were permitted to skip required breaks, then those breaks would exist in reality only at the discretion of a crew foreman or job superintendent. The unorganized worker who insisted on taking breaks would be the first laid off and the last to be rehired. | Construction workers who work too long without food or who become exhausted because of inadequate breaks can be a safety hazard to themselves, other workers on the job site, and the general public. | | | Wage Order 16 already allows for an "on-duty" meal period. | | | | | | We oppose any effort to weaken the current requirements for construction workers. |
| Theodore Franklin, Weinberg, Roger & Rosenfeld [on behalf of Alameda County, Contra Costa County, and South Bay Central Labor Councils, and SEIU, United Health Care Workers West] | | - California public policy favors workers' rights to meal and rest breaks. The IWC orders have required that employers provide regular meal breaks since 1916 and rest periods since 1932. - The word "employ" in the wage orders is defined to mean "engage, suffer, or permit to work." Thus, | - Employers have countless ways to discourage workers from taking breaks while formally "offering" them. The employer controls the schedule, what shifts are offered, when work stops and starts, and whether and how a replacement is | By counteracting fatigue and providing a respite from stress, rest and meal breaks play an important role in preventing injuries and maintaining a safe and healthy workplace. | | | | | | | In addition to scheduling longer workdays and workweeks, employers have sought to increase productivity by speeding up production lines, providing incentives for increased output, maintaining a leaner workforce, and pressing workers to | | The Murphy decision was especially important to those who seek to protect workers' rights to meal and rest breaks through private enforcement of the law. These cases are frequently suitable for class action treatment because of the large number of workers who |

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| | | any employer who suffers or permits employees to work more than 5 hours without a meal period is in violation of the wage orders, regardless of the hypothetical availability of a meal period. - Employer groups seek to eliminate the clear standard for employer compliance by displacing the holding in Cicairos and only requiring them to "offer" meal breaks. | available to relieve the employee on break. Thus, the employer, not the employee, has the power to create real opportunities for meal and rest breaks. - Individual employees and their employers do not confront each other with equal bargaining power. Employees without the benefit of a CBA must rely largely on minimum standards established by the state and federal governments to safeguard their health and safety. | | | | | | | | work harder, increasingly through the use of computer tracking that records employee performance and provides a basis for warning employees whose performance lags behind the desired pace. As a result of increased workload and pace, breaks are needed to counteract the risk of injury to employees. | | have suffered the same injury. Oftentimes, it is a former employee who will serve as the initial plaintiff, for which a 3 year statute of limitations is more suitable. |
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| Lourdes Garcia, Teamsters, Chauffeurs, Salesdrivers and Helpers, Local Union No. 572 | | | | | | | | | | | | | Bruce MacRae of UPS, does not have the authority to speak on behalf of the Teamsters Union. He stands alone in objecting to the current law regarding breaks. |
| Winnie Fields | | | | | | | | | | You have already taken away our 50 minute lunch and time to relax. I cannot eat in just 30 minutes. We also need time to wash hands before and after eating. We need to get back to the 50 minute break. | | | |

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| Duane Armbruster, Construction Worker | | | Instead of taking away breaks, employers should be monitored more closely to make sure they comply with the current law, as most employers take advantage of breaks in the name of the all-mighty dollar. | When you work outdoors during the summer heat, breaks are even more of a safety issue. Without these breaks, fatigue is a major safety concern. | | | | | | | | | |
| Lori Slater | | | Do not take away the lunch break. It is a fundamental human right. Protect workers against exploitive workplace practices such as the elimination of break time. | | | | | | | | | | |

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| Dennis Hawley, Former Small Business Owner | | | I am opposed to any lunch break take-away. Depriving workers of regular breaks is neither healthy nor moral. If the law changes such that regular breaks are no longer required, conscientious employers will be placed at an economic disadvantage. | | | | | | | | | | |
| Al Woltenbeck | | | All workers should be allowed to take lunch and rest breaks. | | | | | | | | | | |
| Peggy Rodriguez | | | People deserve a break. | | | | | | | | | | |
| David Hurlburt | | | We need more, not less, protection from the greedy boss. | | | | | | | | | | |
| Peter Sherman, Il Massimo Lounge | | | The current law should be strengthened, not weakened. | Breaks are a healthy, beneficial part of everyone's day. | | | | | | | | | |

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| Geary Juan Johnson | | | <ul style="list-style-type: none"> - The incidents of meal and rest period violations have increased incredibly over the past 5 years. - The penalty for denying a meal period is currently so low that, instead of acting as a deterrent, it actually encourages employers to violate the code. The penalty should be increased to \$1,000 per meal period denied. - DLSE enforcement should be increased. | | | | | | | | | | |

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| Joseph Villela, Coalition for Humane Immigrant Rights of Los Angeles | | | - All workers deserve time to eat and rest without intimidation or fear of reprisal. | - Health experts agree that workers need regular breaks to prevent injuries to themselves, co-workers, and the public caused by repetitive stress, hunger, and fatigue. - Workers who work with chemicals, pesticides, excessive heat, and heavy machinery are particularly at risk if employers are no longer required to provide breaks. | | | | | | | | | - The Labor Agency should be protecting workers' rights, not trying to undermine them. - Recent cases are important victories for workers and should not be circumvented by new regulations. |

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| Assemblywoman Loni Hancock, California Legislature | | | | - The medical community agrees that workers need regular breaks to prevent injuries to themselves, co-workers, and the public. - Workers who work with chemicals, pesticides, excessive heat, and heavy machinery are particularly at risk if employers are no longer required to provide breaks. | | | The law permits on-duty lunch breaks if required by the nature of the work and agreed to by the employee. | - Current law strikes a balance between employer schedule flexibility and ensures worker protection. The law allows lunch breaks to be waived by mutual consent for shifts of fewer than 6 hours. - Workers can request "make up time" if they need to leave early and can work extra hours later in the week without accruing overtime. | | | | | - The Labor Agency should be protecting and enforcing workers' rights, not proposing policies to infringe upon their rights. - Recent cases protect workers' rights and should not be circumvented by new regulations. |
| Danielle Lucido, Worksafe | | | Any reduction in break protections will be particularly harmful to low wage workers and workers who are not able to express themselves in English. They do not have the job security or | - Research shows that workers who take breaks are less likely to sustain injuries on the job. - The number of breaks a worker takes should not be decreased. Studies show there should be more frequent rest breaks to | | | | | | | The reduction or elimination of break protections may reduce productivity and increase workers' compensation costs for employers. | | |

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| | | | ability to demand their breaks. | allow the body to recover from repetitive motion and thus decrease the incidence of injury. - Breaks are critically important to workers in hot environments. Taking sufficient breaks away from the heat is vital to lowering a worker's body temperature and preventing sickness and death. - The danger associated with shift work combined with a decrease in breaks would both increase the risk of shift worker injuries and the risk to the community that a tired worker will make a mistake that results in catastrophe. | | | | | | | | | |
| Becky Monroe, Bet Tzedek Legal Services | | | - It is not unusual for our clients to work 10 to 12 hour days | | | | The law permits on-duty lunch breaks if required by the nature of the | - There is flexibility under existing law. Lunch breaks can be waived | | | | | |

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| | | | <p>without any breaks.</p> <ul style="list-style-type: none"> - Some clients in the garment industry are denied breaks and are penalized if they try to take more than 5 to 10 minutes to eat at their machines. - The problem is lack of enforcement of existing laws and wage orders so that employers continue to force employees to work through statutorily mandated breaks to the detriment of the health and safety of workers and the public. - Any change in the wage orders that would weaken the requirements would encourage scofflaw | | | | work and agreed to by the employee. | <p>by mutual consent for shifts of fewer than 6 hours.</p> <ul style="list-style-type: none"> - Workers can request "make up time" if they need to leave early and can work extra hours later in the week without accruing overtime. | | | | | |

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| | | | employers to ignore these worker protections entirely. | | | | | | | | | | |
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Meal Periods
 Summary of Written Comments
 From
 2007 Public Forums By
 The Labor Commissioner
 (Written Comments postmarked up to and including August 31, 2007
 as well as submitted at the Public Forums)

| Commenter | Flexibility of timing of break | Definition of "provide" | Potential for Abuse of workers | Health and Safety | Collective bargaining issues | Discipline of employees for not taking break | On-duty meal period | Waiver of the first meal period | Waiver of the second meal period | Duration of break | Productivity | Block of time approach | No change needed |
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| Matthew Goldberg, Legal Aid Society; Laura Moskowitz, National Employment Law Project | | | <ul style="list-style-type: none"> - Low wage workers are routinely warned that they will be terminated if they take meal periods for longer than 15 minutes at the work site. - The problem is lack of enforcement of existing laws and wage orders so that employers continue to force employees to work through statutorily mandated breaks to the detriment of the health and safety of workers and the public. - Any change that would weaken the requirements would encourage scofflaw employers to ignore these worker protections entirely. | | | | The law permits on-duty lunch breaks if required by the nature of the work and agreed to by the employee. | <ul style="list-style-type: none"> - There is flexibility under existing law. Lunch breaks can be waived by mutual consent for shifts of fewer than 6 hours. - Workers can request "make up time" if they need to leave early and can work extra hours later in the week without accruing overtime. | | | | | |
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| Timothy Griffiths, Centro Legal de la Raza | | | <ul style="list-style-type: none"> - If DLSE were to reduce break protections, vulnerable workers would be left to fend for themselves each day. - Low income workers currently hold little on-the-job leverage to insist on breaks. | <p>Many of our clients carry out dangerous and fatiguing manual labor. Under existing break laws, workers are still pressured to postpone or forego their breaks; as a result, they often suffer increased workplace injuries.</p> | | | | | | | | | |

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| David Borgen, Goldstein, Demchak, Baller, Borgen & Dardarian | | | In many cases, we find that the meal/rest period rules are ignored by employers who are also violating other work rules. There is already a substantial environment of employer lawlessness regarding meal periods. | | | | | | | | | | - DLSE has no authority to alter the laws on meal and rest periods as defined by the Legislature. Nor is it consistent with DLSE's purpose to explore ways to dilute regulatory protections for workers. - The current rules provide bright line tests. Any movement toward fuzzier, more "flexible" rules will only make it more difficult to understand the rules. |
| Angel Gomez, Epstein, Becker & Green | | | | | | | - We urge DLSE to find that the requirements for an "off-duty meal period" have been met, where: (a) the employees are involved in safety-sensitive jobs, and must remain on the premises to be able to respond | | | | | | |

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| | | | | | | | to emergencies; (b) the employer provides meal and break rooms; and (c) the employees are indeed relieved of all normal responsibilities during their meal periods. - DLSE's current requirements regarding "nature of the work" are unnecessarily strict. We urge DLSE to adopt a more practical standard regarding the definition of the "nature of work". Where it would be highly impractical for the employer to provide an off-duty meal period, those circumstances should qualify for an on-duty meal. - For 12 hour shifts, DLSE | | | | | | | |
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| | | | | | | | should clarify that 2 on-duty meal periods are permitted per shift. | | | | | | |