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

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

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

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

If you require any special accommodations, such as a
translator, please let us know so that we can make one available to you.

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

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

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

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

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

Here today I am very pleased that we have representatives from Cal OSHA, DLSE, EDD and DIR to
assist you. Could those representatives please stand, please? Could you stand so that -- make yourselves known? Okay. We have a number of representatives who I'm so pleased to hear are here. If anyone has any particular issues that are unrelated to this forum, they are available.

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

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

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

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

I'm here to talk about the health and safety of the
patients of California and the professional practice of registered nursing. Under Title 16, California Code of Regulations, I'm here as required as a patient advocate.

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

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

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

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

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

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

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

MS. BELTRAN: Hi. My name is Gloria Beltran. I've been with the transportation industry for 11 years. I'm here to speak on the lunch breaks. I think all employees -- drivers should be able to negotiate with their local unions on whether they should have lunches or not. Our drivers feel that being able to not take a
lunch allows them to get off work earlier and spend more
time with their family, and take care of whatever
appointments they need.

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

COMMISSIONER BRADSTREET: Thank you very much.

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

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

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

   We have a non-manufacturing environment. We have
kitchens where there's food. People come in, have
breakfast and lunch. To require these employees to stop
for half an hour in the middle of a client session is
seen as onerous to those employees. They are more bothered than they are appreciative. Especially because they have enough down time during the day to enjoy the kitchen and the facilities that we provide.

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

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

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

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

COMMISSIONER BRADSTREET: Good morning.

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

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

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

I mean what I'm looking for, or what I'm asking for, I guess, is some specific rules in regards to, you know, a hospital setting. Thank you.
COMMISSIONER BRADSTREET: Thank you very much.

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

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

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

MR. JACKSON: Sure. We --

COMMISSIONER BRADSTREET: That's better.

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

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

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

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

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

COMMISSIONER BRADSTREET: Thank you very much. Could I ask that people, if they're going to talk, would you mind doing it outside? Because it's a little difficult to hear when there's a sort of buzz going on. So if you are going to talk, please don't do it when
Also, I forgot to mention that please no applause for anybody. Let's just listen. So, thank you.

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

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

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

We also, because of our flexible schedules, would like the flexibility to be able to decide that we can work through our lunches, and are able to leave early so that we can take care of child care issues, or even just run errands. Trying to get to someplace that closes at six o'clock is impossible currently.
So we would just like the flexibility to be treated as people who can make our own decisions about what time we take our lunch. Thank you.

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

MS. MATKIN: A lot of the --

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

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

COMMISSIONER BRADSTREET: Okay. Thank you.

MS. MATKIN: Thank you.

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

COMMISSIONER BRADSTREET: Good morning.

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

And we have a live help line that handles thousands of HR compliance questions throughout the year. The meal
and rest period is one of the main topics of discussion on a regular basis.

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

Sorry. Go ahead.

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

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

And I heard the example, which we have had tons of examples of, where people want to leave 15 minutes early, so they want to work that timeframe to be able to leave early to go take their kids, or see their doctor, or what
have you. And those kind of flexibility things are gone.

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

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

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

COMMISSIONER BRADSTREET: One question.

MR. WILBUR: Yeah.

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

MR. WILBUR: Not the firing. You know, reprimands
come because, quite frankly, the liability is big. I
mean, you know, we've had cases now recently that, you
know, it's right there. So not the firing. Not at all.
But I've had people say, look, you know what, you're
going to take that break, period. And without regard to
the kind of flexibility you try and provide.

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

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

    COMMISSIONER BRADSTREET: Thank you very much.

    MR. WILBUR: You bet. Thank you.

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

    COMMISSIONER BRADSTREET: Good morning.

    MS. LOPEZ: My name is Maria Lopez. I come from the
Valley of Coachella. I am -- I work in the fields. My
problem is about the rest periods that are given to the
people who work in the fields. They don't take -- they
don't give us time of rest. For example, we go to work at five o'clock in the morning. At 9:30 they give us lunch. At 12:00 we have another 10 minutes rest.

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

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

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

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

MS. LOPEZ: We'll wait for you.

COMMISSIONER BRADSTREET: No applause, please.

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

COMMISSIONER BRADSTREET: Good morning.

MR. TYNER: And I'm representing our 600 drives in the state of California, along with our thousands of
drivers nationwide. My comments are going to be very similar, along the lines of the gentleman that just spoke from the transportation industry.

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

I'm sorry, sir. Go ahead.

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

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

MR. TYNER: I'm with Schneider National.

COMMISSIONER BRADSTREET: Right. Is that trucking?

MR. TYNER: Yes, it is.

COMMISSIONER BRADSTREET: Okay.

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

COMMISSIONER BRADSTREET: Thank you.

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

And there's a couple of reasons for that, first off being safety. The gentleman before had mentioned that.
Our drivers operate in a very, very congested and difficult arena. It's unfair and impractical to ask them to take their break immediately at a five- and a ten-hour period. It's almost impossible for them to pull over on the side of the road. And doing so will lead to a very unsafe situation which could cause accidents.

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

The third piece really deals with our customer. Our customers are very demanding. They expect us to be there when they need us. So when their dock gets cleared, they call us. They expect us to back that truck right up to the dock to make sure -- back the trailer up to make sure we're ready to unload or load that freight. It's just unacceptable for us to tell them that our driver's there; however, he's over on the other side of the yard taking
his 30-minute break and he'll be with you in a minute.

So that won't work for our customer base.

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

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

COMMISSIONER BRADSTREET: Thank you very much.

MR. TYNER: Thank you.

MR. POLASKI: Commissioner.

COMMISSIONER BRADSTREET: Good morning.

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

I'd like to take a couple of minutes out to respond
to some of the issues raised in the previous hearing. The first one is the argument that you heard in the previous hearing that you held about the claim that the law is confusing. Current law is actually quite simple: Provide your employees with a 30-minute lunch break. The law is easy to follow. It's easy to document for compliance purposes.

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

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

In 2005 Wal-Mart was handed a jury verdict of $172 million for failing to give their workers meal breaks and rest periods on a wide broad basis. Their own attorney
responded by saying there had been some compliance
problems by Wal-Mart a number of years ago, but there's
100 percent compliance now.

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

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

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

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

MR. ZEERMAN: Good morning.
COMMISSIONER BRADSTREET: Good morning.

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

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

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

It's also an issue of logistics. Typically, these crews are working 12-hour shifts. And that reason is
it's one of the -- they're in very remote areas, and it's very difficult to move to 8-hour shifts where you'd have to have 3 crews. One, the availability of employees is simply not there.

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

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

COMMISSIONER BRADSTREET: Thank you very much.

MR. McCUSKEY: Good morning.

COMMISSIONER BRADSTREET: Good morning.

MR. McCUSKEY: My name is Ron McCuskey. I represent Long's Drugstore. I'm both a pharmacist and a Pharmacy Manager. And we've -- I've experienced some frustration in both dealing with the five-hour lunch period ruling, and also trying to enforce it as an employer.
What we're asking for is a little bit of flexibility in the rulings. In the pharmacy industry there's natural lulls and an ebb and flow in the goings on of a pharmacy. A lot of times we're engaged in consultation and patient care. It's very difficult to stop at that moment and take a lunch period. Sometimes we just have to do it.

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

COMMISSIONER BRADSTREET: Thank you.

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

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

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

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

COMMISSIONER BRADSTREET: Thank you very much.

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

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

Strict interpretation of sections 11 and 12 of wage
order 9, the meal and rest break periods, causes our industry great concern because oftentimes enforcing that is outside the hands of the employer.

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

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

National security and general security of the company now requires that limousines be housed in specific secure areas. Events such as the Oscars, for example, where there are high-profile celebrities, events such as government events, where the local police will rope off an area for transportation of the government
employees, we are required by security personnel to keep
our driver in the vehicle in that secure location.

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

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

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

COMMISSIONER BRADSTREET: Thanks.

MR. COOK: Thank you.

COMMISSIONER BRADSTREET: Thank you for being here.

MS. SAULS: Good morning, Commissioner and panel.

COMMISSIONER BRADSTREET: Good morning.

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

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

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

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

Thank you so much for having this hearing. And one thing that we just would like to say is we do really need
flexibility as it goes for the trucking industry. Thank you.

COMMISSIONER BRADSTREET: Thank you very much.

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

COMMISSIONER BRADSTREET: Good morning. Go ahead.

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

COMMISSIONER BRADSTREET: Yes, ma'am.

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

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

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

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

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

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

COMMISSIONER BRADSTREET: What was the name of your
corporation or --

MS. OVERTON:  Lamps Plus.

COMMISSIONER BRADSTREET:  Excuse me?

MS. OVERTON:  Lamps Plus.

COMMISSIONER BRADSTREET:  Thank you very much.

MS. OVERTON:  Thank you.

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

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

But I will also echo the remarks made earlier from the gentleman with the employers' group. I do have clients -- and responding to the question you posed to him. I do have clients who call me in the untenable position of they don't want to have to penalize their employees, or discipline or counsel them because they won't take their meal period on time. But they feel that they have to in order to implore upon these individuals
the necessity to take it. Otherwise, they'll -- the employer will end up being in a penalty position. It's an untenable position that employers find themselves in.

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

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

The other industry that I would like to address is the hospitality industry. In the hospitality industry, this is a gravely important issue. You're dealing with individuals who make most of their money, frankly, on gratuities. They're not going to want to leave their
tables for 30 minutes and let somebody else take up and provide different service for the individual, and then not get their gratuity.

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

COMMISSIONER BRADSTREET: Thank you.

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

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

COMMISSIONER BRADSTREET: Thank you very much. I was very concerned about what you had to say. Excuse me. I was concerned. And I would like you to go talk to our
enforcement people. Okay? Who will stand up. Our
enforcement people. Let's make sure that you go talk to
them. Okay?

MS. LOZANO: Yes, I will.

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

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

COMMISSIONER BRADSTREET: Good morning.

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

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

The current rule denies workers the option of
foregoing that meal break time and leaving work early to
take care of important family matters.
In the case of bus operators, the current rule
denies them the choice of more traditional work
schedules, which have all but disappeared due to the
provisions of wage order nine.

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

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

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

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

MS. WILLIAMS: Good morning, Commissioner.

COMMISSIONER BRADSTREET: Good morning.

MS. WILLIAMS: My name is Cheryl Lobassi-Williams.
I'm a member of United Nurses Association of California,
Union of Healthcare Professionals, and AFSCME
I'm a Registered Nurse who works 12 hours. I work labor and delivery. Meal and break periods are very important to the safety of my clients and my patients. I take it very seriously that the rules that were put in place be enforced.

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

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

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

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

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

COMMISSIONER BRADSTREET: Thank you very much.

Thanks for being here.
MR. KISH: Good morning. My name is Kevin Kish.
COMMISSIONER BRADSTREET: Good morning.
MR. KISH: Good morning. I'm an Attorney with the Employment Rights Project of Bet Tzedek Legal Services. We represent -- we provide free legal representation to the working poor in Los Angeles County.
And I want to say, first of all, that we recognize that the meal and rest break requirements, like any governmental regulation, impose burdens. And those burdens fall on employers. We've heard from them. And they fall on nonexempt employees who would prefer not to take breaks. That's a fact.
The Legislature and the Industrial Welfare commission have tried to strike a balance between the burdens and the benefits. And I think theoretically it's a good idea to talk, have this discussion about whether that balance has been properly struck. In practice it's hard for me to do so because none of the people that I see get those benefits.
As of this morning we have 92 employments cases open in our office. We don't take any that are just rest and meal break violations because we have so many minimum wage violations cases. Of those 92 cases, only 6 are cases in which there were no violations of the meal and rest break provisions of California law. The industries
are construction, car wash, garment, restaurant, cleaning
or janitorial, auto repair, security, manufacturing and
domestic work.

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

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

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

I don't think White v. Starbucks confuses things
that much. That case involves a manager who failed to
take meal breaks when he himself was the only person who
could have granted himself the meal breaks. I really
don't have a problem with that decision, frankly. And I
don't think that it impacts any of the cases that I see.
Because my people are not the people in charge. They
rely on the meal and rest break laws, though they are
often unenforced, to work towards minimum, and we're
talking minimum, labor standards in the low wage
economies of this state.

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

COMMISSIONER BRADSTREET: Thank you very much.

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

Just to give a few examples, we represent a retail
client who pays their employees on a commission basis.
And these employees, when they're --

    COMMISSIONER BRADSTREET: Could you speak into the
    mic?
    
    MR. DENTE: I'm sorry. It's a little low for me.
    
    COMMISSIONER BRADSTREET: I know. I'm sorry.
    
    MR. DENTE: When the employees are told that they
    must take their meal periods and counseled when they
    don't do that, they express much frustration for the
    reasons you heard earlier with the woman talking about
    her retail situation. They don't want to walk away from
    a sale.

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

    This isn't -- this frustration isn't limited just to
    our retail clients. If you look to our restaurant
    clients, they have the same complaints from their waiters
    and waitresses. The last thing that a waiter and
    waitress want to do after servicing a table for an hour
    is to walk away from that table right before dessert is
    laid on the table, share their tips, and explain to the
patron in the middle of their meal why they're being
serviced by someone else.

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

COMMISSIONER BRADSTREET: Thank you.

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

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

COMMISSIONER BRADSTREET: Thank you.

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

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

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

COMMISSIONER BRADSTREET: Thank you.

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

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

COMMISSIONER BRADSTREET: Thank you very much.

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

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

COMMISSIONER BRADSTREET: Good morning.

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

This law impacts us in a variety of ways. I'll
speak personally quickly. For example, I have to start
getting ready for my break a half an hour before it has
to start. I have to remove anything that identifies me
as an employee, because as I make my way to the time
clock, customers pounce on me. Vendors come. People see
employees come.

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

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

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

I don't think anyone here disagrees with the intent
of the law. I think that's pretty much global. We all
understand where it comes from. And it's there to
protect the minority of companies -- or workers that
suffer at the minority of companies who do not obey the law and do not agree with the intent of it.

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

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

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

MR. BUSHAY: Yes, a time clock.

COMMISSIONER BRADSTREET: -- on your breaks?

MR. BUSHAY: Correct.

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

MR. BUSHAY: It shows up on our corporate records as a lunch penalty, and which our store is penalized and the employee is paid. And we as management get penalized.
Not financially, but in our records as managers. So our company keeps strict details on that. Our time clock won't even allow them to punch back in early. They have to call a supervisor before they can punch in early.

COMMISSIONER BRADSTREET: Okay.

MR. BUSHAY: So --

COMMISSIONER BRADSTREET: Thank you.

MR. BUSHAY: You're welcome.

MS. HARVEY: Good morning.

COMMISSIONER BRADSTREET: Good morning.

MS. HARVEY: Imagine for a minute --

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

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

COMMISSIONER BRADSTREET: And who are you with?

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

COMMISSIONER BRADSTREET: Thanks. Thank you.

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

I am now a union representative for healthcare
professionals -- UNAC, UACP, AFSCME -- and we represent more than 15,000 MEMBERS. This very day we have nurses missing meals, working through breaks, in part due to dedication to their patients. But in part due to poor starring, and in part due to intimidation and coercion by their supervisors to avoid overtime.

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

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

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

COMMISSIONER BRADSTREET: Thank you very much.

Thank you.

MS. CARREN: Good morning. My name is Jody Carren. I'm a Human Resources Manager for Toyota Motor Sales USA. And I'm here on behalf of the company and our employees.
And we'd like to thank you for the opportunity to speak on this important workplace issue.

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

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

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

We are hearing from other employers who apparently have issues where they don't provide this. That's not Toyota's case. We're committed to providing these periods of time for our people to take breaks. We ask
that the State address those issues as opposed to the
employers who are committed to providing that time off
and that flexibility for our associates.

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

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

COMMISSIONER BRADSTREET: Thank you.

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

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

Unless an employer clearly tells the workers that we
can take the 30-minute meal break, we cannot stop working
because we always have work to do. Being able to take a
meal break is incredibly important protection. It should
not be changed or watered down.
When I was working as a garment worker, I worked six days a week, eight hours a day. I was never given any rest breaks. The factory was always very busy. I always had work to do. I never took rest breaks.

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

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

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

COMMISSIONER BRADSTREET: Thank you very much.

Thank you.

UNIDENTIFIED FEMALE: Ted Galloway. The next five speakers will be Bruce McCray, Jose Tello, Max Wagner, Tom Moxley, and Hy Yang.
MR. McCRAY: Madam Commissioner, thank you so much for allowing us to be here. My name is Bruce McCray. I'm the Director of Public Affairs for UPS. I also started at UPS in 1978 as a Teamster unloader. Worked my way to driver. I was shop steward with the Teamsters for three years.

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

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

Allowing flexibility would not weaken the rights of workers to take their meal period. Indeed, the Teamsters Union, which represents our drivers, has embraced it. They too recognize the logistical and safety problems the current five-hour meal period creates for its members. They have bargained in our UPS Teamster contract for a six-hour break time, going to the sixth hour to take
their meal. But, unfortunately, the union agreement is meaningless because state law dictates otherwise that trumps the terms of our contract.

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

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

We need help. We need help immediately. We've been working on this for years. This is something that no one here -- I mean I'm a firm believer. We don't want lunch
periods taken away. We just need the flexibility in today's laws. Thank you.

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

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

COMMISSIONER BRADSTREET: And they --

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

COMMISSIONER BRADSTREET: And why have they been terminated?

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

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

MR. McCRAY: Yes, ma'am.

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

MR. McCRAY: To go to the sixth hour, yes, ma'am.

But the state law supersedes that. Does not allow us the flexibility in our law. All unions would love the flexibility in their contracts. That's why it's negotiated. It's negotiated between a company and the employees and the unions. But all truckers really need
this flexibility in the state of California. Thank you.

COMMISSIONER BRADSTREET: Thank you very much for being here.

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

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

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

COMMISSIONER BRADSTREET: I'm sorry. What percent?

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

Again, we continued to monitor it every couple of weeks with similar numbers. We started writing people
up. We suspended a couple of people. And pretty much
we've got it under control now. But we still have
gripings from our employees, and we still have
violations.

Our employees have expressed to us that they would
like to have -- be treated as adults, given the
flexibility to do what they would like to do, what's good
for them. They don't want to have to take 30 minutes if
they get done eating in 15, and just have to sit there
and wait for the clock to tick around to 30 minutes.
They want to be able to take off early some days. Can I
take off early? No. Big brother says you got to take
the meal period.

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

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

MR. WAGNER: Los Angeles Freightliner.

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

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

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

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

The Starbucks decision, in essence, shifts the burden for providing breaks from the employer to the employee, even though it is the employer who has the
workplace authority to authorize and permit breaks. Most employees do not have the power or authority to arrange schedules or set reasonable production quotas in order to provide for meal breaks. Only employers have the power and authority to do this.

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

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

COMMISSIONER BRADSTREET: Okay. I'm sorry. You're going to need to wind this up. But I encourage you to submit your legal analysis in writing.
MR. TELLO: Just one more sentence.

COMMISSIONER BRADSTREET: One more sentence?

MR. TELLO: Yes.

COMMISSIONER BRADSTREET: Okay. One more sentence.

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

COMMISSIONER BRADSTREET: Okay. Thank you.

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

The current article 16 and the meal breaks, the construction trades, those under collective bargaining, had that long before California ever came up with it. It's easily enforced. I've been on both sides, on management for the company, and now management for the union. It's easy to schedule meal periods. If we get in a critical point, especially with the ironworkers, and it's a safety issue, they go into overtime. Then they're afforded their meal break on company time with overtime wages. It's never been an issue.
Our contractors for over 100 years have given rest periods in the middle of the day. They realize the more production by having a good safe workforce that isn't tired and fatigued. The meal periods are flexible. You can have it at four, four and a half, five. We do it all the time.

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

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

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

MR. YUNG: Good morning.

COMMISSIONER BRADSTREET: Good morning.

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

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

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

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

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

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

As restaurant workers we work closely with -- in close proximity to fire and other equipments for heating food. Mistakes can lead to very severe injuries.

Employers should be one to inform us that we have the right to take the meal breaks and rest breaks.

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

Workers do not have the same advantages as employers. They are in a better position to know the law and to inform us about the law. Workers who need these protections should not have their rights taken away.

Please do not take them away. Thank you.

COMMISSIONER BRADSTREET: Thank you.

MR. YUNG: Thank you.

COMMISSIONER BRADSTREET: Thank you very much.

UNIDENTIFIED FEMALE: The next five speakers will be
Eric Bork, Deborah Suto, Kong Chin Ching, Yu Senteo, and Lorraine Visio.

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

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

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

Over the past three and a half years LAFLA has been collaborating with the DLSE office in downtown Los Angeles by conducting a bi-monthly self-help clinic where we assist workers seeking help with wage calculations, and preparing the initial claim for them.
We are very appreciative of this opportunity to help both workers and the DLSE office deputies for it has given us additional insight to challenges facing low wage workers.

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

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

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

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

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

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

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

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

First, from the employee side of it, you know, it is very difficult for the employees, servers particularly,
bartenders, to want to leave their stations. You know, we've already heard that earlier. But it is a loss of money for them. You know, it's an industry that relies heavily upon gratuities. And when they do leave their tables, service does suffer from somebody taking over a section for them. And it is a loss of money.

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

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

When you have 40 or 50 people on during any given shift, it makes it difficult to get them all done before
01 that five-hour period. Especially when it gets closer to
02 that middle four-hour period, which would be ideal in
03 anybody's situation.
04 
05 So I do agree with the fact that breaks should be
given. We don't deny that. We just do ask for
flexibility with when they are given. Thanks.
06 
07 COMMISSIONER BRADSTREET: Thank you.
08 
09 MR. CHING: Hello. My name is Xong Con Ching.
10 
11 COMMISSIONER BRADSTREET: Good morning.
12 
13 MR. CHIN: I live in Monterey Park, California. My
profession is Cook. I have worked in several restaurants
in Southern California over the past five years. I work
in restaurant in 2005 and 2006. I worked 6 days a week,
12 hours a day, which meant 72 hours a week. I was only
given 20 minutes for a meal break per day. During the
meal break I also had to work.
15 Therefore, I have ample experience to understand
that it is very difficult for restaurant workers to take
their 30-minute meal breaks and 10-minute rest breaks.
It is very difficult to get employer to actually give us
the 30-minute meal breaks. Unless the employer informs
us that we have the right to take the 30-minute breaks,
we cannot stop work because we have a lot of work to do.

Being able to take a meal break is a very important
protection. The employer should be the one to make sure
that we are able to take our meal breaks. I cannot ask
another worker to cover for me during the meal breaks
without my manager's approval.

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

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

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

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

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

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

I've heard today from a lot of employers about
workers who are angry. In my industry workers are angry,
too. Workers in nonunion television production in
Hollywood work long hours. A typical day can be anywhere
from 12 to 20 hours, sometimes 6 to 7 days a week. I
have yet to meet anyone on my campaign being properly
paid overtime, or afforded meal breaks in accordance with
California labor law.

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

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

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

MR. BODKIN: Good morning.

COMMISSIONER BRADSTREET: Good morning.

MR. BODKIN: My name is Craig Bodkin. I'm the CEO
of a local messenger firm called 24/7 Delivers. I think
it's pretty obvious after listening to the previous
speakers that this is an issue that can definitely not be
painted with a broad brush.

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

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

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

Many times we are requested to meet delivery
parameters within 30 to 60 minutes. If forced to
schedule rest periods and lunch breaks, we estimated
conservatively that we will have to overstaff by 20 percent in order to meet our clients' service demands. This additional staff, of course, will not be supported by additional revenue, and our drivers will be hit where they live, in their wallets.

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

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

In closing, I must say that I believe the only
parties who will benefit from this are going to be the attorneys who will seek legal advantage and opportunity by exploiting this legislation to target well-meaning owners in this industry like fish in a barrel, forcing many out of business with the cost of litigation, and putting those who work for them out of a job. Thank you for your time.

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

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

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

Just to give you an idea of what's going on with
these shows, I won't give you my personal example because the first one I was mentioning to you was just a few years ago. A recent show on CBS just worked 52 days straight with no days off. Another CBS show 24 hours straight with no breaks.

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

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

COMMISSIONER BRADSTREET: Thank you very much.

UNIDENTIFIED FEMALE: Dennis Swanson or Mike Rubin.

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

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

MR. SWANSON: Lamps Plus.
COMMISSIONER BRADSTREET: Oh, okay. Thank you.

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

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

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

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

So the way around that is to make them take 45-
minute lunches, for which they aren't paid, so they spend an extra 15 minutes at work, so they at least take the 30-minute lunch. Or they're forced to stand at time clocks, standing there watching the time clock until the thing turns to 30 minutes.

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

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

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

COMMISSIONER BRADSTREET: Thank you very much.

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

COMMISSIONER BRADSTREET: Called what? I'm sorry.

MR. RUBIN: The Melting Pot. I came up here with a
long speech. Drove two hours. And on the way was informed by my attorney that I could not really speak what I wanted to say. And the reason why, the gentleman prior to me, or two times -- two before me, talked about perhaps shakedown lawsuits causing small companies to go out of business.

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

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

So I wish I could go into more specifics because I really came here to cry on your shoulder. But, unfortunately, I can't do that. And I just hope that at
some point there's some sanity back with regards to this issue. Thank you.

COMMISSIONER BRADSTREET: Thank you. Thank you for coming.

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

MS. DURAZO: Good morning.

COMMISSIONER BRADSTREET: Good morning.

MS. DURAZO: Commissioner Bradstreet, welcome and congratulations.

COMMISSIONER BRADSTREET: Thank you.

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

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

For example, I come out of the hotel and restaurant industry. Housekeepers have a room quota, and they are
always under pressure from management to complete their room quota. Under that kind of pressure, they are very inclined to skip their meals and their breaks. If there is not a guaranteed break, then that's exactly what they will do. They'll have to succumb to that fear.

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

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

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

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

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

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

COMMISSIONER BRADSTREET: Thank you very much. Yes.
MR. ZOLINSKI: Good morning. Thank you for having us. My name is Dave Zolinski. I'm a Regional Manager for TGI Friday's restaurants.
COMMISSIONER BRADSTREET: I'm sorry. Which restaurants?
MR. ZOLINSKI: TGI Friday's.
COMMISSIONER BRADSTREET: Thank you.

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

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

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

I believe that we need to make this an employee choice. We need to make this more flexible from their perspective, and for them to decide when they should take their break. I do believe they should be entitled to an
unpaid break. But I think, if it were my choice, I would allow them to take that within that eight-hour period regardless of what time mandated by state law. Thank you.

COMMISSIONER BRADSTREET: Thank you.

MR. GRUDE: Good morning. Thank you for the opportunity to speak to you today. My name is Steven Grude. I'm an attorney with Littler Mendelson. As you may know, Littler Mendelson is a national law firm that represents employers throughout the country. We have thousands of clients across the country, and hundreds, if not thousands, with operations here in California. And today I'm here to speak to you on behalf of a client, KB Home, a national home builder. And the problems facing KB Home with the --

COMMISSIONER BRADSTREET: Sorry. What was the client?

MR. GRUDE: KB Home.

COMMISSIONER BRADSTREET: KP?

MR. GRUDE: KB as in boy.

COMMISSIONER BRADSTREET: Thank you.

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

COMMISSIONER BRADSTREET: Thank you.

MR. GRUDE: They have extensive operations in California. And really, their problems with the
regulations are not just unique to KB Home and in their industry, but across the board along some of the things we've heard today.

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

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

For example, using an example for KB Home, KB Home has sales representatives that are on site at new home construction sites. And as with other examples you've heard here today, if the sales representative is speaking with a customer and is in the middle of a tour or the middle of trying to make a sale, it's -- that person does not want to have to take a break immediately to comply with the meal regulations. And would be better served to have the flexibility of taking that break at another time.
You also have instances throughout many industries where employees come back and punch in to get back to work on time. They punch in to work, you know, at the 27-minute mark, or the 28 mark. And now all of a sudden you have the precarious situation where the employer is potentially on the hook because the employer has not provided the quote, unquote, "30-minute uninterrupted break." But yet, everybody had the same intent, which is that the employee got the break, and the employee was just trying to come back and be on time back to work.

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

COMMISSIONER BRADSTREET: Thank you very much.

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

COMMISSIONER BRADSTREET: Hi.

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

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

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

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

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

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

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

In my position, I had no support from my supervisor.
to take a meal or rest break. All of us should have had a meal break and rest break. Unfortunately, no one had -- one had to be doing its job constantly. The priority was to get the job done and think about eating later.

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

COMMISSIONER BRADSTREET: Thank you very much.

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

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

COMMISSIONER BRADSTREET: Thank you.

MS. FOGEL: It's very -- you've got your work cut out for you, obviously. I really felt compelled to come today and kind of talk about how hard it is from a management perspective to try and balance it. You know, I hope that -- I guess I really just wanted to stress
that the employees a lot of times take it out on us, and
they really feel that we're being unfair when we're
trying to manage the break situation.

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

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

COMMISSIONER BRADSTREET: Thank you very much.

MS. HERNANDEZ: Good morning. My name is Alicia
Hernandez. I was working in Napa grapes in Coachella
Valley. My problem is that a company where I did work,
they gave us only two times of rest, one for half an
hour, and then for ten minutes. Our work was hourly, but
I think it was by contract because our work I think was
by -- for -- because of production, not by hour. Because
I was penalized if I didn't do production.
I would like for you to stop the injustices that are in the fields, especially with the rest periods. Because there are a lot of people who are older, and we need that three periods of rest. I wish that you can stop these injustices, and you could come over and visit us in the Valley of Coachella. Thank you.

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

MR. ALVARADO: Good morning.

COMMISSIONER BRADSTREET: Good morning.

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

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

Then we were supposed to have one hour lunch until 1:00, but I could never take the whole hour. I would start a whole new route at 12:40, and be back at the Regional Center at 2:00 for a new route. I would finish at 4:00 or 4:20, depending on the traffic.
It impacted me much not having a rest break because I would get very tired. So that I would not lose my job, I remained quiet. But the injustice of not getting a rest break depressed me. Personally, it affected me in that I feel very stressed out with so much pressure at work, to the point that it caused family problems. The day that I tried to claim my rights I got fired.

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

COMMISSIONER BRADSTREET: Thank you very much.

Thank you.

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

My responsibilities were to pick up children from their homes and take them to the Regional Center, and at the end of the day pick them up from the Regional Center and take them to their homes. In the middle of the day I
took some children on field trips and took care of them.

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

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

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

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

I want all of you to realize that all types of jobs that are repetitive are tiring. Simply being here
sitting down without working for two hours, it's tiring. Imagine what it is to work all day without a rest or meal break. Thank you.

COMMISSIONER BRADSTREET: Thank you very much.

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

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

To work six hours continuously for the District of Los Angeles is very difficult for a person who has to take care of one, five or forty kids with incapacities. We're talking also about hotel employees who are forced
to work from 16 to 18 hours without breaks in situations that are very difficult.

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

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

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

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

COMMISSIONER BRADSTREET: Your name, sir?

MR. PULI: Louis Puli.

COMMISSIONER BRADSTREET: Thank you.

MR. PULI: Out of Chula Vista. I work for Veolia. First year and a half I had no lunch. I had no lunch. But the company's changed their ways and I am extremely happy.
But this thing where they're talking about forcing people to have a lunch is counterproductive. I have a handful, about 33, of the employees that feel that the lunch is good, but they need something else. A choice to take their lunch or to not have their lunch. They might have other things more important to do. Pick up the children from daycare, whatever it might be. You know, there's other things besides lunch. There's other people speaking with me, or from my group, that feel that the lunch is a good thing, but they don't want to have it down their throat. That's basically it. Thank you.

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

MR. PULI: Yes, ma'am.

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

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

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

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

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

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

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

So what we do as a result of that is we err on the side of caution. Sometimes someone who's scheduled to
work maybe only five or five and a half hours, perhaps four and a half hours, is asked to take a meal period after two and a half hours worked solely because we're concerned that they may end up working longer than the requirement and then the meal period's necessary. So in many cases we're asking people to work -- to be at work for four and a half hours, yet they're only going to be paid for four hours of time.

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

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

In closing, we've heard some very compelling arguments today. And I know there have been cases where people have been denied work -- or access to meal periods. Certainly I feel that those employers should be held accountable. Those -- they should be provided. I just feel that by giving them the choice, it's in the
benefit of the worker as well as the employer. Thank you.

COMMISSIONER BRADSTREET: Thank you very much.

MS. HALL: Good morning.

COMMISSIONER BRADSTREET: Good morning.

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

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

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

And I in particular want to address the five-hour mandate. Generally we have about 12 nurses working. That can be up to 15 nurses working. So, of course, in order to be a good manager and comply with this regulation, I took to my shared governance council a schedule that said to get all those people off the floor
by the fifth hour, which would be noon, that they would
have to start their breaks at eight o'clock in the
morning.

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

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

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

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

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

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

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

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

          I talked to the nurses. The majority eat before their shift. They like a snack in the morning. They want to take their lunch breaks much farther into their shift. And essentially, they said, we want to eat when
we're hungry. We want -- we don't want to eat according
to schedule. We want to eat when it makes sense to us,
when we're comfortable leaving our patients.

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

COMMISSIONER BRADSTREET: Okay. Thank you very
much.

MS. HALL: Thank you.

MS. ARCHIBALD: Good morning.

COMMISSIONER BRADSTREET: Good morning.

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

I think a very healthy environment is breakfast at
home, midmorning snack on your break, lunch around 1:00
or 2:00, 5:00-ish in the afternoon break. Keeps your
blood sugar stable. It keeps your energy level stable.
If I eat at 11:00 or 12:00 and I have seven hours ahead of me, I know that I'm zapped by the end of that five- or six-hour period.

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

COMMISSIONER BRADSTREET: Thank you very much.

MS. CARILLO: Hello.

COMMISSIONER BRADSTREET: Hello.

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

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

MS. CARILLO: Carillo, yes.

COMMISSIONER BRADSTREET: Thank you.

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

COMMISSIONER BRADSTREET: Thank you very much for being here.

MS. RODIN: Good morning.

COMMISSIONER BRADSTREET: Good morning.

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

COMMISSIONER BRADSTREET: Thank you very much.

Okay. Please, no applause.

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

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

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

MS. BRUTON: Hi. My name is Lorraine Bruton. I'm the Shop Steward. Oh, I work for First Transit. I work
for First Transit. I'm the Shop Steward at the Valley yard. And I'm with Teamster Local 572.

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

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

Our company have scheduled over 100 employees with lunch breaks. We are open 7 days a week. Some of the driver work for 8 to 10 days. Before everyone had a lunch break, some of the drivers was -- would complain about their head aches at the end of the 8-hour shift. With the lunch breaks, the drivers -- with the lunch
breaks, drivers would no longer have headaches. They could better focus on the traffic, and less preventable accidents.

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

COMMISSIONER BRADSTREET: Thank you very much.

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

And the only way that the shops that they work in, all these workers, ever change their behavior is when one or two courageous workers gets to the Labor Commissioner and files a claim. And when they win that claim, and they typically do because these are violations, then the
shops change their behavior. They look to the Labor Commissioner to enforce the labor laws of California.

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

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

And, you know, the unspoken word here is that it's going to cost more money to afford these lunch breaks. Nobody says that, but we know it's true. And that's the cost of doing business in California. And the cost of doing business in California is to comply with California's labor laws. And we look to the Labor Commissioner to enforce those labor laws. And I thank
COMMISSIONER BRADSTREET: Thank you very much, sir.

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

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

MR. JAHODDY: Producers Dairy Foods.

COMMISSIONER BRADSTREET: Thank you.

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

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

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

Number three issue is just administratively it's very difficult to -- you know, we've got 250 routes going
out a week. Just difficult to enforce and insure that everyone is taking their lunches at appropriate times. That's all I had.

COMMISSIONER BRADSTREET: Thank you.
MR. JAHODDY: Thank you.
COMMISSIONER BRADSTREET: Thank you very much.
MS. BARNES: Good morning, Commissioner. My name is Shirley Barnes. I am the Senior Vice President of Human Resources, and are here representing the St. Joseph Health System.

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

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

I believe that there is a need for clarity. If we were to call three different legal firms in this room or across Southern California, we may get three different opinions as to how we should implement this.
COMMISSIONER BRADSTREET: Has that been your experience?

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

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

We're working with tight schedules, shortages, fluctuating patient census, admits, discharges. It's a constantly changing environment. And as I said, the
patients can deteriorate very quickly. We're not trying to take away something that is an inherent right to the employee. We're doing everything in our power to make sure that employees receive their breaks and their lunch periods. But they don't want to take them when we're scheduling them. And as an organization, we are very focused on employee engagement and trying to derive satisfaction within our work environment. This is a major dissatisfier.

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

COMMISSIONER BRADSTREET: Thank you very much.

MR. KEMMER: Ladies and gentlemen, thank you. My name is Byron Kemmer. I work for Producers Dairy. I have here 65 letters signed by my co-drivers. I drive truck for Producers Dairy. My employer is more than willing to give us two breaks, three breaks, four breaks, three lunch breaks, whatever it takes to get that truck back safely.
The gentleman talks about flexibility. With this new law there is no flexibility. There needs to be some. We can't stop and park on the side of the road just because our lunch break is up, or there's an accident, or construction, so on and so forth. We get tickets for it.

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

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

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

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

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

MR. BROWN: Hello. Good afternoon. My name is
Kayla Brown. I work for First Transit over 10 years. For the past few years we had the lunch break. We continue to have the lunch breaks. No problem with the lunch break. The company complies. 

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

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

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

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

I really do think that the route should be -- excuse
me again. I really don't think it should be a
negotiating issue between the company and the union. I
think it should be the way that's in law now that's in
effect.

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

COMMISSIONER BRADSTREET: Thank you very much, sir.

MR. SLUETER: Hi.

COMMISSIONER BRADSTREET: Hi.

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

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

Madam Commissioner, I would like to welcome you to
your new role, and I'd thank you for taking the time to
hear our testimony.
The current meal period rules may force restaurant employees to work longer for less money. Current meal period rules prohibit employees from working more than five hours without a meal period. This often results in employees taking their meal period when the restaurant is busiest, and when they're generally making the most tips. These regulations, therefore, only serve to increase the length of the shifts, and create a period of dead time that generates no tips. Many of my employees would rather have the option to decide for themselves whether to waive the meal break or not.

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

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

If they don't, employers face potential liability.
Under this enforce all meal periods interpretation of the law which we believe is wrong and unfair. If an employee clocks in from a meal break even one minute early, employers could face liability.

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

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

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

Adopting an enforce all meal periods interpretation will only force restaurants to impose harsher protective
policies, which ultimately punish those employees who just want to work, earn their tips, and get on with doing the other things in life that are important. Thank you for taking the time to listen.

COMMISSIONER BRADSTREET: Thank you. Thanks for being here.

MR. JACKSON: Good afternoon.

COMMISSIONER BRADSTREET: Good afternoon.

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

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

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

We have the same issues. We take care of patients. Patients don't get sick on a time clock. And we want to take care of them when they need us, not when the schedule says it's time to take care of them.
For that, we're asking for some relief in flexibility. Our employer, which is Methodist Hospital, provides on-campus nursing -- I mean on-campus care for infants all the way up to preschool. Many of our nurses and other staff members take advantage of that school.

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

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

Thank you.

COMMISSIONER BRADSTREET: Thank you very much.

MR. WICK: Welcome.

COMMISSIONER BRADSTREET: Thank you.

MR. WICK: And thanks for this public forum. My name is Bruce Wick. I'm Risk Manager for CalPASC, an association of specialty contractors in the state. And
we certainly as good employers support the intent of this law. We support strongly the enforcement of it consistent.

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

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

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

We know bad employers have to be hit in order for them to comply. But how can good employers take better
care of their employees in a more flexible way? I'd like you to consider that. Thank you.

COMMISSIONER BRADSTREET: Thank you very much.

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

COMMISSIONER BRADSTREET: Go ahead.

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

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

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

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

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

COMMISSIONER BRADSTREET: Thank you very much.

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

First, we haven't talked much about a lot of their shifts. But at Dalton, most of us start work from 2:00 to 5:00 in the morning. A lot of us want to eat
breakfast from 5:00 to 7:00 in the morning, and then not
eat lunch again 'til noon or 1:00 in the afternoon.
That's more than five hours later.

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

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

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

The other point that I'd like to make is that there
isn't -- at Dalton, and I'm sure it's with many
employers, you can take longer than a half hour. We've
heard lots of comments about, well, I only get 20 minutes. At Dalton management doesn't care if you take an hour for lunch. All you have to do is get your work done by the end of the day. Thank you.

COMMISSIONER BRADSTREET: Thank you very much.

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

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

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

We work with trucking companies that will be hard pressed if drivers have to pull over in the middle of a job and shut for meal breaks. With the traffic
congestion we encounter in California, it is difficult to estimate travel time. And what is sufficient time to make a run on one day may be insufficient on the next day. Setting a specific requirement for the time of the meal break will impact business productivity and efficiency.

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

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

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

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

COMMISSIONER BRADSTREET: Thank you.

MS. LUCHITO: Good afternoon. My name is Danielle
Luchito. And I'm here to testify on behalf of Work Safe, the coalition of low wage immigrant worker advocates and all workers in California. I testified in Sacramento as well. And I thank you --

COMMISSIONER BRADSTREET: Yeah, I thought you did.
MS. LUCHITO: Yeah.
COMMISSIONER BRADSTREET: So you've come down for this as well? Wow.
MS. LUCHITO: I have.
COMMISSIONER BRADSTREET: Good for you.
MS. LUCHITO: Thank you for this second opportunity to talk. My testimony today will provide you with additional information --

COMMISSIONER BRADSTREET: Okay.
MS. LUCHITO: -- about why the present meal and rest break protections should remain unchanged.

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

Research shows that workers who take breaks are less likely to sustain injuries on the job. This is true for workers in all industries. Workers who use computers
frequently experience musculoskeletal discomfort with an incidence rate as high as 50 percent.

Ten different studies conducted between 1984 and 2003 confirm the effectiveness of rest breaks in reducing musculoskeletal discomfort in computer tasks. Musculoskeletal injuries are costly to workers and to employers.

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

These days away from work result in lost income to workers and employers. And in addition to the direct cost of lost productivity and the cost of replacing workers temporarily and permanently injured by repetitive stress, repetitive stress injuries burden the Workers' Compensation system. For policy year 2004 repetitive stress injuries resulting in permanent disability cost California's Workers' Compensation system over
$68 million.

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

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

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

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

In sum, there's strong evidence that the reduction of meal and rest break protections may both reduce productivity and increase Workers' Compensation costs.
Equally important, it would also lead to a loss of wages and livelihood for injured employees. Thank you.

COMMISSIONER BRADSTREET: Thank you very much.

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

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

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

COMMISSIONER BRADSTREET: Thank you.

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

And what I'm here to talk about today is a little bit about our situation is very different than a lot of
what you've heard today. We are a continuous operation in both of these plants. We work 24 hours a day, 7 days a week. And we do that because volume in our business is very leveraging. And we try to keep the costs per unit down by making a lot of those units.

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

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

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

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

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

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

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

COMMISSIONER BRADSTREET: Thank you very much.

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

I'm not going to rehash everything. I appreciate
the opportunity to speak with you. Because if you are considering fashioning a regulation, I think it's important to know some of what we in the trenches have to deal with every day.

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

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

Also, other abuses are -- and this is very particular to the restaurant industry and those industries that have tips. There is an extreme motivation for employees not to take a meal break, not to be gone from their tables for 30 minutes. And they will hide from taking their meal breaks. And they are
disincentive to do it. And I have spoken with them, and they say, I don't want somebody else to take over my tables. It will affect my tip.

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

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

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

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

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

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

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

COMMISSIONER BRADSTREET: Hi.

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

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

We also have hazmat drivers, livestock drivers under certain circumstances that cannot leave their loads. They have to stay with their loads consistently, so they
can't leave. And they may have break or their lunchtime sitting watching their loads, or whatever, so it's like an on duty.

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

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

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

COMMISSIONER BRADSTREET: Thank you very much. Thanks for being here. Yes, sir.
MR. CHAPPELL: Well, good afternoon, Commissioner. My name is Fara Chappell. I am a Division Manager of a public transportation company in Chula Vista, and here representing over 500 drivers in the San Diego area. Our concern is the same that we've heard throughout the transit industry, the flexibility to negotiate with the unions for when they take a lunch break.

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

COMMISSIONER BRADSTREET: Okay.

MR. CHAPPELL: Thank you.

COMMISSIONER BRADSTREET: Thank you very much for being here.

MR. CHAPPELL: Thank you.

COMMISSIONER BRADSTREET: Yes, sir.

MR. THERKOFF: Good morning.

COMMISSIONER BRADSTREET: Good morning.

MR. THERKOFF: My name is --

COMMISSIONER BRADSTREET: Afternoon.

MR. THERKOFF: My name is Mark Therkoff. My co-driver here, Terry Crise. We're here on behalf of the
Local 386 in Modesto. We're Teamsters. We're drivers in
the transportation industry. And I've listened to a lot
of good men and women testify here today, and it's
obvious that the Department of Labor needs to step in and
enforce the break laws.

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

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

MR. HERRERA: Good afternoon, Commissioner.

COMMISSIONER BRADSTREET: Good afternoon.

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

COMMISSIONER BRADSTREET: I'm sorry. What was your
name, sir?
MR. HERRERA: Simon Herrera.

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

MR. HERRERA: Veolia Transportation.

COMMISSIONER BRADSTREET: Got it. Okay.

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

COMMISSIONER BRADSTREET: Thank you very much.

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

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

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

COMMISSIONER BRADSTREET: Sorry, sir. Did you say
you have agreements?

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

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

    COMMISSIONER BRADSTREET: Thank you very much.

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

    COMMISSIONER BRADSTREET: Thank you.

    MR. AUGUSTINE: One of the interesting things I'd like to point out to you is simply this: We support flexibility. We work with just about every labor union in the state of California. We employ over 14,000 employees in the state. And the constant cry that I hear
from my employees is why are we not having the same
opportunity to negotiate with our labor unions as the
public sector employee has.

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

   COMMISSIONER BRADSTREET: Thank you very much.

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

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

   We try to follow all the rules as much as we can.
And most of the time we can cover all of the rules with no problem. However, even with our laws that cover our hours of service, there is flexibility. If we have a problem with inclement weather, or various things that can happen on the highway, we can go over the hours. But we have to have a reason for it.

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

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

COMMISSIONER BRADSTREET: Thank you, sir.

MS. LEESE: Hi. I'm Valerie Leese. I'm the President of Jack Jones Trucking in Ontario. We're a family-owned company. We deal with truckload lists and
truckload and we have -- we also handle hazardous material. And that is one of the issues that I'm really concerned about. With the traffic in this area, there are a lot of places my drivers cannot be. He's got to stay with his truck. There is no place for them to park. Even when there are fast food restaurants, anything like that, sometimes they're in shopping centers, my driver gets asked to move his truck because it's interfering with the rest of the people in the parking lot.

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

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

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

MR. FAVOROTE: Good afternoon. My name is Tory
Favorote and I represent employers in a variety of wage and hour matters. But here today I'm specifically speaking on behalf of one client, Veolia Transportation.

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

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

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

Another similar problem that I have and a question that I can't answer for my clients is this: Why do
public sector employers under section 11(f) and 12(c) that have a Collective Bargaining Agreement specifically have a carve out from meal/rest break provisions and they don't because they're in the private sector providing the same exact service, same employees in the same thing, and unions representing both sides on the issue.

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

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

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

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

COMMISSIONER BRADSTREET: Thank you very much.

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

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

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

I don't know about you, but if I dial 911, I want
that person to be rested. I want her to be able to be
alert and to be able to communicate with those officers
exactly what my emergency is, and to be able to get me
some help as soon as possible. These employees handle thousands of calls. Those calls never stop while they're plugged in.

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

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

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

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

COMMISSIONER BRADSTREET: Thank you. Thank you.

MR. MOORE: Hi. My name is William Moore. I'm
Assistant Administrator, El Centro Regional Medical Center in beautiful El Centro, where it's about 113 right now, and the wait at the border is about an hour.

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

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

A very interesting measure, and I'll say this really quickly, I spoke purposely with a number of our travelers, travel nurses that have come to us from other states to help us to wrestle with our ratios issue and the huge staffing shortage that we have. I spoke with some of our nurses that have just immigrated to come to work for us from Korea, India, the Philippines. I also
have a good number of nurses who cross the border every
day and who are actually Mexican nationals. Physicians.
Some of them are physicians in Mexico.

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

COMMISSIONER BRADSTREET: Thank you very much.

UNIDENTIFIED FEMALE: Jesse Ramos or Mark Smith?
The next five speakers will be Maria Sura, Lilia Garcia,

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

COMMISSIONER BRADSTREET: Thank you very much.

MS. SURA: Good afternoon. My name is Maria Sura.
My experience is in the janitorial industry. I've worked without being provided a lunch or a break. I had to clean 11 floors, 22 bathrooms. They never told me that I had to take a lunch or a break. There was a lot of pressure for me to finish my job.

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

COMMISSIONER BRADSTREET: Thank you very much.


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

We also represent the nonunion workers. There are 221,000 janitors in California, and only 25,000 of those or so are union. We deal with the nonunion sector. Most
of these workers, as you just heard from Maria, are immigrant workers who aren't familiar with their rights.

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

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

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

And the second case is an Orange County case, a
large firm, and the employer brought in hundreds of affidavits that were not in the wage period and had all kinds of other issues. But the hearing officer accepted them. And these affidavits were stating that people were taking their breaks.

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

COMMISSIONER BRADSTREET: Thank you very much.

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

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

We insult our nurses' intelligence and professionalism when we tell them, you have to leave this
patient now. You have to leave your surgical procedure now. You may not finish drawing the blood now. And why? Because the law says you have to begin your meal period precisely at the fifth hour of your shift, and you're running out of time.

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

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

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

COMMISSIONER BRADSTREET: Thank you.

MS. PROFETTA: Hi. Good afternoon. I'm Karen Profetta. I'm a Registered Nurse and a Nurse Manager in an obstetrical unit. We have 12-hour units and we work
from 7:00 to 7:00.

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

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

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

The mandatory breaking at inopportune times is
dramatically affecting staff morale and patient satisfaction. Staff see themselves as not being treated as professionals who are responsible enough to know that they have to take a break.

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

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

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

COMMISSIONER BRADSTREET: Thank you very much.

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

MR. BARNADO: Hi. Jonathan Barnado on behalf of the
California Restaurant Association. We represent over about 22,000 member restaurants in the state of California. A couple points I want to reiterate. I know we testified in Sacramento, but I wanted to respond to a few things.

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

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

What we're asking for is flexibility for those employees where there is mutual agreement between the
employee and the employer either to move their break to a
time that works for both the employer and the employee,
or waive it altogether in certain instances.

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

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

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

COMMISSIONER BRADSTREET: Thank you very much.
MS. LEONE: Good afternoon. Cynthia Leone with the California Manufacturers and Technology Association. I'm not going to repeat what a lot of our employers have already echoed. We represent a wide variety of industries, from assembly lines to manufacturing, food processes, oil industry, and biotechnology.

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

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

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

MS. HIGGINS: Hello. My name is Linda Higgins and I'm here representing Addis Healthcare. We're a home health agency that services over 2,000 clients throughout Southern California. And I'm sure you'll recognize that
our industry is similar to the hospital. We -- our workers are in the homes, and most of the time they're there for three- to four-hour shifts and taking care of our clients', mostly elderly clients, needs.

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

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

This, in our view, is not only impractical but absolutely inhumane. If it was your mother, she would be receiving only three hours of much needed medical personal care a day. How would you feel if a caregiver had to leave her unattended to walk out of the house and take her 10-minute break to have a snack? Not just because she chose to do so, but because the government regulations required it. I believe you would be outraged and incredulous that any regulation would require such
insensitivity, and that recognizing this flaw the
irresponsible regulatory agency would not make necessary
changes to correct this.

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

COMMISSIONER BRADSTREET: Thank you.

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

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

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

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

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

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

In regard to that, I think we need to seek some clarification or definition on exactly what provide means. If my employer provides a meal period at the end
of five hours, does that mean I have to take that meal
period? Why can't I use my own personal judgment in
knowing when it is appropriate for me to leave my
patient, and in making that decision also include looking
out for my own well-being.

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

MS. FLYNN: I certainly will. Thank you.

COMMISSIONER BRADSTREET: Thank you very much for
being here.

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

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

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

If the employee doesn't start their lunch by the
fifth hour or take a 30-minute uninterrupted lunch, I
write them up and they think I'm crazy. That is the only
way for me to protect the company from the liability. I would rather be doing other important matters in my role as the HR Manager.

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

COMMISSIONER BRADSTREET: Thank you. I'm sorry.

What was the name of the company, your business?


COMMISSIONER BRADSTREET: Thank you.

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

If our central station goes down, myself being in the Information Technology Department, it is my sole
responsibility to make sure that those receivers, which are the devices receiving the signals from the field, it's my responsibility to bring those receivers back up. Failure to do so in a timely manner can cause a loss of property, or worse, a loss of life.

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

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

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

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

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

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

Before 911 we used to allow a lot of the trucking companies to take breaks. They could break inside our yards. They could sit in their trucks, do paperwork. Give them access to our break rooms, et cetera. Since
the law -- or excuse me, since 911 and the CTPAT process, we no longer can give access to drivers. Unescorted access is out. We must have them do their transaction and leave. And so allowing trucks to sit in our yards and idle and do paperwork, that flexibility is now gone.

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

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

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

And so we would like to support the trucking industry and the truck drivers and the dispatchers,
et cetera. They should have flexibility and discretion to break these drivers where it benefits the drivers for safety, cargo security, public safety. Also environmental impacts can be reduced, and also reducing community impacts.

So at our marine terminals we have the same situation. Fifteen minutes to us can make or break a driver getting into a port. And if that 15 minutes, because he had to stop and do something different, can mean that he's shut out of a terminal for an hour and a half. And so, again, we'd like the driver or the dispatcher to have the ability to get inside the terminal and take their breaks at their discretion.

And just like today, we saw how you exhibited flexibility in deciding to have a shorter break and run your hearing so you could accommodate comments. That's kind of what we're asking for from an industry perspective is flexibility so we can make sure we meet the needs of our customers. Thank you.

COMMISSIONER BRADSTREET: Thank you very much.

MS. BROYNES: Good afternoon. Julianne Broyles. I'm here on behalf of the California Employment Law Council. And thank you again for holding these forums so people could hear about what has been going on in California workplaces over the last several years.
I think it's important to note, and I know that others have made the point, that while it was a fairly quick turnaround on the notice of the hearings, you should expect a lot more in comments over the next few weeks as the deadline comes up.

I did want to point out a couple of things, and I think it's been very clear from what has been said here today, employers and employees need a clear roadmap. They're making detours and wrong turns into areas that get them into trouble. Not intentionally for the most part. And for those employers who are breaking the law, absolutely the penalties are there to stop them from doing it, and Enforcement should go after them.

But for those employers who are merely trying to do the right thing by their employees, clear guidance is needed, a roadmap so employers don't end up on the wrong side of the law merely by trying to do right by their employees. Because at the end of the day, the only people who benefit from that are the trial attorneys. And that's not really what should be the purpose of any law.

We do think that under the current rule there are several things that really do need to be addressed, and I wanted to just give you a short list. We need a clear definition of what it means to provide. I think that's
critical in the overall scheme of things to make sure that that occurs.

We need to clarify when the obligation of the employer to provide the meal period begins and even ends. I mean it's -- I've heard this on and over -- on and off today of when can we start it? Is it the first minute of the fifth hour? Is it -- do they have to take it by the last minute of the sixth hour? Is it some other period of time depending on the length of the shift?

We need to set out timeframes for meal periods for both the regular workday and a longer workday. We need to clarify how and when an employee can waive one of the two meal periods when they're in a longer workday. We need to clarify what the meal period obligations are even in the split shift or graveyard shift settings.

We need to -- for the on-duty meal periods, we need to clarify when and how on-duty meal periods --

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

MS. BROYLES: -- today at least based on prior opinion letters issued by the DLSE. We do think that we need to clarify and provide, again, a roadmap, instructions on how and when employees can request and receive a waiver on their meal periods if that's what the employee wants to do. I think the perfect word I heard
today to describe that is employee preference should be able to drive that particular action. And I think it's important that it be addressed.

And last of all, we do need to create a collective bargaining carve out for those employers who are organized, or wish to bargain us with their unions, so you have sensibility and reality in employer labor relations, so at the end of the day you have a reasonable treatment of both union and nonunion employees.

If you have any questions? We'll be doing certainly many more comments in writing. But I thought that would help in terms of trying to just focus in on what we think as employers. Because CELC are the largest companies in California. They're the most responsible employers. And they just want to see this solved. Thank you.

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

MR. HILFENHOUSE: My name is Jim Hilfenhouse. And I'm here representing Laborers Local 300 and the construction industry. As my brother from the electrical workers put it, we have at least contract protection on this. And listening through this morning, I hear a lot of association, human resources directors, and attorneys. You need the workers in the field.

Flexibility spoken by management becomes an
interesting quotation between employers and then a paycheck. Yes, there would appear to be, I'd be your Bar card, that necessity is an appropriate defense in some of these circumstances. And what I've heard from the truckers is we need more rest break periods, not that the breaks aren't needed. It just presents an awkward professional position on that.

When we work in a construction job and a concrete pour, and I heard about hot loads, there is a necessity to get the work done. However, it's extremely excruciating backbreaking work for somebody out in the field. They need those breaks. And you need to have some rational approach to it. And we do it in a contract situation. But we represent 10,000 employees versus management. So we sit down at the table and do it.

When it's an individual versus their employer, that flexibility question becomes very unique when you think that maybe if you say no and you're an at-will employee, will you have a job the next day. So please keep that in mind.

I know there needs to be certainly more input from the workers in this situation, not from associations, not from paid representatives coming up here speaking to you, but in the field practicality. You know, yes, you do have to consider that.
And certainly I would hear in the nurses, having represented them, the employers were certainly attempting to run their caseload up as high as it could be before legislation was invoked to establish a ratio. So you need the on-the-job experience. And absolutely nobody would recommend taking a break in the middle of a procedure, or something that would endanger a patient's life. But certainly there is almost no interest on the other side to not maximize the productivity of the worker at their expense and health. Thank you.

COMMISSIONER BRADSTREET: Thank you.

UNIDENTIFIED FEMALE: And I'm just going to run through the names of people that actually we called earlier and that either weren't here at the time, or have come back. Steve Rodriguez, Rick Hendrix, Gene Nguyen, Chris Rooney, Lorraine Vissy, Yaz Intow, Jesse Ramos, Mark Smith, Richard Limebach, Kelly Hinnett, Antonio Sanchez, Gregory Batten, or if there's anyone else who would like to speak.

COMMISSIONER BRADSTREET: Oh, yes, sir? Okay. This is our last speaker for the day.

MR. JACKSON: Good morning, Chairman. My name is Charles Jackson. I was talking with the drivers of First Transit Company. We're asking you not to drop this law. We need the lunch break for health reasons, and we need
the rest time. Because we're going back and forth, back
and forth. And it's for the safety of the passengers.
If we have to run 10 hours a day without a break, you
could have accidents. So we're asking you to keep this
law in effect like it is.

COMMISSIONER BRADSTREET: Okay. Thank you very
much. So that ends the forum for today. I want to thank
everybody for a very, very informative discussion, and
for your courtesy throughout. It was much, much
appreciated and very, very informative for us. And I
encourage all of you and your various organizations,
workers, et cetera, to submit written comments by the
August 31st deadline. Thank you very, very much.

(Meeting adjourned.)

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REPORTER’S CERTIFICATE

STATE OF CALIFORNIA )
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COUNTY OF SOLANO )

This is to certify that I transcribed the foregoing pages 1 to 169 to the best of my ability from a recording provided to me by State of California, Department of Industrial Relations.

I have subscribed this certificate at Dixon, California, this 1st day of June, 2008.

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Leisa M. Miller
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