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# new exemptions from california's meal period requirements for certain union-represented employees

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*MSK Client Alert*

February 7, 2011

California's meal period law, Labor Code Section 512, was recently amended to exclude certain unionized commercial drivers, construction workers, and security officers, as well as certain unionized employees of gas companies, electric companies, and local publicly owned electric utilities. The new law went into effect on January 1, 2011. To qualify for the exemption, the commercial drivers, construction workers, security officers, and gas or electric utility workers must be covered by a valid collective bargaining agreement ("CBA"), which must:

1. provide for the covered employees' wages, hours of work, and working conditions;
2. expressly provide for meal periods for the covered employees;
3. expressly provide for final and binding arbitration of disputes concerning meal periods;
4. expressly provide for premium wage rates for all overtime hours worked; and
5. expressly provide a regular hourly wage that is at least 30 percent higher than the state minimum wage. (Currently, the California minimum wage is \$8.00 per hour, so the CBA's regular hourly wage must be at least \$10.40.)

The law defines the categories of employees who are exempt from the meal period law if their CBA meets the above five requirements as follows:

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- A "**commercial driver**" means any of the following: an employee who operates (1) a "commercial vehicle" as described in Section 260 of the Vehicle Code, which is a vehicle that is required to be registered as such, and is used for transporting persons for hire, compensation, or profit, or is primarily used for transporting property; (2) a "paratransit vehicle" as described in Section 462 of the Vehicle Code, which means a passenger vehicle (other than a bus, school bus, general public paratransit vehicle, or taxicab) that is operated for hire under a contract, utilizing drivers who receive compensation and spend a majority of their workweek operating a passenger vehicle, and that is regularly used to provide transportation to people with disabilities, people with developmental disabilities, or people over 55; or (3) a "commercial motor vehicle" under Section 15210 of the Vehicle Code, which includes any vehicle that requires a Class A or B license, or a Class C license bearing an endorsement issued by the DMV for the carrying of hazardous materials (but does not include recreational vehicles, military equipment, agricultural machinery operable by someone without a license, or vehicles operated in an emergency situation at the direction of a peace officer).
- Employees employed in a "**construction occupation**" are those employees included in the job classifications referred to in Section 7025, *et seq.*, of the Business and Professions Code. Those jobs include work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair, and any similar or related occupations or trades.
- A "**security officer**" is an employee who is registered pursuant to the Private Security Services Act, at Section 7580, *et seq.*, of the Business and Professions Code, and who is employed by a "private patrol operator" also required to be registered by that statute.
- An employee employed by an "**electrical corporation**" is one employed by any corporation or person (identified in Section 218 of the Public Utilities Code) that owns, controls, operates, or manages any electric plant for compensation within California, except where electricity is generated on or distributed by the producer through private property, solely for the producer's own use or the use of its tenants, and is not intended for sale or transmission to others.
- An employee employed by a "**gas corporation**" is one employed by any corporation or person (identified in Section 222 of the Public Utilities Code) that owns, controls, operates, or manages any gas plant for compensation within California, except where gas is made or produced on private property, and distributed by the maker or producer through private property alone, solely for the producer's own use or the use of its tenants, and is not intended for sale or transmission to others.
- An employee employed by a "**local publicly owned electric utility**" is one employed by an entity identified in Section 224.3 of the Public Utilities Code, which includes: (a) a municipality or municipal corporation operating as a "public utility" furnishing electric service; (b) a municipal utility district furnishing electric service; (c) a



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public utility district furnishing electric service; (d) an irrigation district furnishing electric service; or (e) a joint powers authority that includes one or more of these agencies and owns generation or transmission facilities, or alternatively furnishes electric services over its own or its members' electric distribution system.

Again, if the workers in question meet all of the above five CBA requirements and also fit into one of the above six exempted employee categories, they are completely exempt from the 30-minute meal period requirement under Labor Code Section 512 and its attendant one hour's pay penalty for a missed meal period.

Employers in these industries may want to negotiate for the required CBA provisions. Doing so could produce more efficient meal breaks and shield employers from meal breaks litigation.

### Ask MSK - Q&A Section

**Q: For employees not covered by the new exception, what meal periods are California employers required to provide their employees? Can employees simply agree to waive their meal periods?**

A: In general, employees who work over 5 hours in a day are entitled to an unpaid meal period of at least 30 minutes, and a second unpaid meal period of at least 30 minutes if they work over 10 hours in a day. By mutual consent with their employer, employees may waive the meal period where the workday does not exceed 6 hours; and if the workday is longer than 10 hours but less than 12 hours, employees may waive the second meal period, as long as the first meal period is not waived.

**Q: May employers and unionized employees negotiate for an exemption from state and federal overtime laws in their Collective Bargaining Agreements?**

A: Yes. California overtime rules do not apply to employees covered by a CBA, where that CBA provides an hourly wage of at least 30% more than the state minimum wage (130% of the current \$8.00 per hour minimum wage = \$10.40), and where the CBA provides for a "premium" wage rate for overtime work ("premium" means any amount over the regular hourly wage). However, federal overtime rules under the Fair Labor Standards Act will still apply unless the CBA includes either of the following two provisions: (1) no employee will work more than 1,040 hours during any 26-week period (i.e., no employee will average over 40 hours per week during any 6-month stretch); or (2A) no employee will work more than 2,240 hours during any 52-week period (i.e., no employee will average slightly over 43 hours per week during any 12-month stretch), and (2B) the CBA guarantees between 1,840 and 2,080 hours at the CBA contract rate during any 52-week span, and (2C) employees receive time-and-a-half their regular hourly rate for all hours worked over that guarantee during a 52-week period, as well as time-and-a-half their regular rate for all hours worked over 40 during a week. Please consult experienced employment counsel before relying on these exemptions.