



Governor Signs Legislation to Provide Post-Augustus Rest Period Relief to Unionized Petroleum Facility Employees

Insights

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On September 20, Governor Brown signed AB 2605, which provides that petroleum facility employees in safety-sensitive positions and are covered by a valid collective bargaining agreement are exempt from the requirement that employees be relieved of all duty during rest periods. The bill contained an urgency clause, which means it went into effect immediately upon signing.

In 2016, the California Supreme Court ruled in *Augustus v. ABM Security Services* that employers must provide their workers with duty-free rest periods, and that “on call” rest periods were not allowed. Specifically, the Court stated that the employer in that case could not satisfy its obligations under the law by requiring that employees remain on call. The Court explained that an on-call rest break is unworkable because employees simply could not use the 10 minutes to take care of other personal matters that require uninterrupted time. Therefore, it determined that requiring an employee to carry a pager or respond when the employer seeks contact with the employee is irreconcilable with the requirement of duty-free rest periods.

While the *Augustus* case was limited to security guards working at construction sites, many employers in different industries expressed concern that a court would similarly interpret the rest period requirements for their industries as well.

CBA Exemption for Safety-Sensitive Positions at Petroleum Facilities

Designed to provide some relief to unionized employers in one industry, Assembly Bill 2605 (Gipson) was jointly sponsored by the Western States Petroleum Association and the United Steelworkers Union.

Under the bill, notwithstanding any other provision of law, the requirement that employees must be relieved of all duties during rest periods does not apply with respect to a unionized employee holding a safety-sensitive position at a petroleum facility to the extent that the employee is required to carry and monitor a communication device (such as a radio, pager, or other form of instant communication) and to respond to emergencies, or is required to remain on the premises to monitor and respond to emergencies.

The new law further provides that if a nonexempt employee is affirmatively required to interrupt his or her rest period to address an emergency, another rest period shall be authorized and permitted reasonably promptly after the circumstances that led to the interruption have passed. If

circumstances do not allow for the employee to take such a rest period, the employer shall pay the employee one hour of pay at the employee's regular rate of pay for the rest period that was not provided.

AB 2605 defines "petroleum facilities" to mean petroleum refineries, marine and onshore terminals handling crude oil and petroleum products, bulk marketing terminals, asphalt plants, gas plants, catalyst plants, carbon plants, and any other facility involved in the processing, refining, transport, or storage of crude oil or petroleum products. In addition, a "safety-sensitive position" is a job in which the employee's duties reasonably include responding to emergencies at a petroleum facility.

Moreover, in order to qualify for the exemption, the employee must be covered by a valid collective bargaining agreement that provides for the wages, hours and working conditions of employees, expressly provides for rest periods for those employees, final and binding arbitration of disputes concerning application of its rest period provisions, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage.

New Law Goes Into Effect Immediately But Has a "Sunset" Date

AB 2605 contains an urgency clause, meaning that it went to effect immediately upon signature by the Governor. The bill also specifies that it does not apply to existing cases filed before the effective date of the law.

In addition, the law contains a "sunset date" of January 1, 2021. This means that the law will remain in effect only until January 1, 2021, unless a subsequent piece of legislation extends that date or eliminates it altogether (making it permanent).

Next Steps

Unionized employers in this industry should immediately review their collective bargaining agreements to see if they meet the conditions outlined in the new law. If so, AB 2605 could afford them significant relief in scheduling rest periods for employees in safety-sensitive positions.

While many employers (both union and non-union alike) in other industries would welcome similar flexibility, AB 2605 is limited to a narrow category of employers. Nevertheless, it does provide needed relief to those employers covered by the bill. As we discussed regarding another [recent bill](#) signed by the Governor, bills that provide relief only to unionized employers may have the (intended or unintended) effect of "encouraging" unionization among employers seeking the favorable treatment that the legislation affords.

For more information about this new law, please contact your regular Fisher Phillips attorney, or one of the attorneys in any of our California offices:

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This article provides an overview of a specific state law change. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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