

# New California Law Creates Narrow Rest Break Exemption at Petroleum Facilities

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On September 20, 2018, California Governor Jerry Brown signed into law Assembly Bill 2605. This new law provides that unionized employees at petroleum facilities who hold safety-sensitive positions are exempt from the requirement that employees be relieved of all duties during rest periods. The bill went into effect immediately and will remain in effect until January 1, 2021 with the ability to be extended.

Notably, this narrow exemption applies only to employees who meet the following criteria:

1. Are employed at a petroleum facility in a “safety-sensitive position” (i.e., a job in which the employee’s job duties reasonably include responding to emergencies) and are required to carry and monitor a communication device such as a radio or pager or are required to remain on the premises to monitor and respond to emergencies;
2. Are subject to Industrial Welfare Commission Wage Order No. 1; and
3. Are covered by a valid collective bargaining agreement that expressly provides for, among other things, a regular hourly rate of pay of not less than 30% more than the state minimum wage rate, premium wage rates for overtime hours, rest periods, and binding arbitration of disputes concerning rest periods.

In the case that a nonexempt employee meeting the above criteria is required to

interrupt his or her rest period to address an emergency, the law provides that another rest period shall be authorized and permitted in a reasonably prompt manner after the emergency has passed. If circumstances do not allow the employee to take a rest period, the employer must pay the employee one hour of pay at the employee's regular rate of pay for the missed rest period.

Assembly Bill 2605 addresses concerns that requiring employees in safety-sensitive positions at petroleum facilities to take rest breaks in order to comply with state law could create a potential public safety or security hazard by preventing the facilities from being able to effectively respond to or prevent emergencies such as leaks, fires or explosions. Although the law is limited to a narrow category of employees, it is an example of the legislature's willingness to balance the needs of both employers and employees to protect the public health and welfare.

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