

# National Lawyers Guild

## Labor & Employment Committee

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April 25, 2009

State Senator Mark DeSaulnier, Chair  
Senate Labor and Industrial Relations Committee  
1020 N Street Room 545  
Sacramento, CA 95814

RE: SB 287 (Calderon) - OPPOSE

Dear State Senator DeSaulnier:

On behalf of the National Lawyers Guild Labor & Employment Committee [L&EC], I am writing to express our opposition to Senate Bill 287 (Calderon) which would fundamentally undermine the right to a lunch break for California workers, and will be heard on April 29 in Committee. Working people fought hard to win the right to a lunch break in 1947 and we have defended this right from repeated attacks for over 50 years. We urge you and all committee members to vote against this bill.

SB 287 fundamentally restructures meal period rights, relieving employers of virtually all responsibility and jeopardizing this important labor protection. SB 287 would make the following changes to the law on meal periods:

- SB 287 shifts the burden from employers to employees by redefining what it means to "provide" a meal period. In most California workplaces, employees are "at will" and can be fired at any time for almost any reason. It is unrealistic to think that workers will feel empowered to insist on taking breaks when faced with the threat of losing their job. If this bill were to become law, many workers would waive their right to a meal break when faced with employer coercion or pressure to meet production standards.

- Re-defining "provide" will only result in less clarity for responsible employers trying to follow the law and will lead to more litigation. Under current law, an employer's obligation is clear: provide a lunch break. Under SB 287, employers have to "give the employee an opportunity to take" but do not have to actually provide a break. It is unclear how an employer would even fulfill such a vague obligation. This is likely to give rise to disputes over the meaning of "give an opportunity," as well as what constitutes effective notice to and waiver by the employee, and what type of record-keeping would be needed to demonstrate that a break was made available but not taken. With this lack of clarity, both employers and employees will have less protection.

- SB 287 reverses the general rule that workers are entitled to be relieved of all duty during a lunch period by dramatically expanding eligibility for on-duty lunches. Rather than allow on-duty lunches for workers only under limited circumstances, SB 287 defines "on-duty" so broadly that it could strip teachers, social workers, delivery drivers, restaurant workers, and packinghouse workers of a guaranteed off-duty lunch. On-duty lunches were intended to be available only when off-duty meals are "virtually impossible," not merely as a convenience to the employer. Such a broad expansion of on-duty lunches will likely result in deliberate understaffing and pressure on workers to accept on-duty meals to increase productivity.

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– Current law provides the necessary flexibility to balance the needs of employees and employers. The law already allows lunch breaks to be waived by mutual consent for workers on shifts of fewer than six hours. It also permits on-duty lunch breaks if required by the nature of the work and agreed to by the employee.

– Weakening meal period rights harms the most vulnerable of California's workforce. If employers are no longer required to provide meal periods, and workers are pressured to waive breaks and take on-duty lunches, only workers who feel empowered to demand their rights will actually get to take lunch breaks. Many low-wage workers, immigrant workers, young workers, and workers who lack job security or have to meet production standards will not insist upon taking a break. Recent studies on the underground economy show that these workers are routinely forced to work without lunch breaks under current law; such abuses will only multiply if legal protections are weakened.

– Health experts agree that workers need regular breaks to prevent injuries caused by repetitive stress, hunger and fatigue. Without breaks to eat or rest, workers are more likely to injure themselves and their coworkers. Workers who work with chemicals, pesticides, excessive heat, and heavy machinery are particularly at risk if employers are no longer required to provide breaks. At previous public hearings, workers have testified about serious medical conditions they developed by working without meal or rest breaks and having to use artificial stimulants to stay awake. SB 287 would result in increased pressure on workers to go without regular meal breaks and therefore jeopardizes worker health and safety.

We hope the Legislature will look at ways to strengthen and protect workers rights, not weaken them to benefit corporate lawbreakers. The fundamental right to a lunch break survived the Schwarzenegger Administration's attempted regulatory take-away. It has been recognized and protected in the courts. We urge you to oppose SB 287 (Calderon) when it comes before you in the Senate Labor and Industrial Relations Committee.

Sincerely,

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cc:  
State Senator Ronald Calderon

Committee Members:  
State Senator Mark Wyland, CoChair  
State Senator Dave Cogdill  
State Senator Denise Moreno Ducheny  
State Senator Mark Leno  
State Senator Leland Yee

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