

National Lawyers Guild

Labor & Employment Committee

April 25, 2009

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

RE: SB 807 (Benoit) - 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 807 (Benoit) 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.

Every worker deserves a guaranteed lunch break and this bill would jeopardize that important worker protection in the following ways:

- SB 807 shifts the burden from employers having to provide a break to employees having to ask for one. 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. Recent studies on the underground economy show that workers are routinely forced to work without lunch or rest breaks under current law; these abuses will only multiply if legal protections are weakened.

- Re-defining what it means to "provide" a lunch break 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 807, employers have to "make a break available" but do not have to 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 "make available," 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.

- 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.

– Calling a payment for a missed meal period a penalty is really a big giveaway to corporations like Wal-Mart who have violated the law and don't want to be held accountable. The significance of this change is that it reduces the statute of limitations from 3 or 4 years down to one year. The only reason for such a change is to help corporate lawbreakers escape liability. Several major corporations have been hit with lawsuits by workers who were never given meal periods. A shorter statute of limitations means that the most vulnerable workers, such as young workers and immigrant workers, who may not immediately realize when their rights are violated or know how to find counsel quickly, will be denied access to justice.

– The "wage versus penalty" argument was settled in 2006 by the California Supreme Court. In *Murphy v. Kenneth Cole*, a unanimous State Supreme Court ruled that the payment employers owe for failing to provide meal periods is a wage, not a penalty. Employers could not persuade the courts to get them out of their obligations to their workers so now they are asking the Legislature to intervene.

– 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 807 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.

For these reasons, we urge you to oppose SB 807 (Benoit) when it comes before you in the Senate Labor and Industrial Relations Committee.

Sincerely,

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cc:
State Senator Gil Cedillo

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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