

AMENDED IN ASSEMBLY MARCH 22, 2017
AMENDED IN ASSEMBLY MARCH 8, 2017
AMENDED IN ASSEMBLY FEBRUARY 14, 2017
CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 263

**Introduced by Assembly Member Rodriguez
(Coauthors: Assembly Members Bocanegra and Kalra)**

January 31, 2017

An act to add Sections 226.9, 226.10, and 6401.9 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 263, as amended, Rodriguez. Emergency medical services workers: rights and working conditions.

Existing law, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, governs local emergency medical service systems and plans and establishes the Emergency Medical Services Authority, which is responsible for the coordination and integration of all state activities concerning emergency medical services. Existing law provides that emergency medical personnel have specified due process rights when they are subject to suspension or termination for disciplinary cause or reason, as defined.

Existing law prohibits an employer from requiring an employee to work during a meal or rest or recovery period mandated by an applicable statute, or an applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

~~Under existing law, the Occupational Safety and Health Standards Board within the Department of Industrial Relations promulgates occupational safety and health standards for the state. Under existing law, the Division of Occupational Safety and Health is required to enforce all occupational safety and health standards, as specified. A violation of these standards and regulations under specific circumstances is a crime.~~

This bill would require an employer that provides emergency medical services as part of an emergency medical services system or plan to authorize and permit its employees engaged in prehospital emergency services to take prescribed rest periods. This bill also would require the employer to provide these employees with prescribed meal periods.

~~The bill would require the standards board, no later than July 1, 2019, to adopt standards developed by the division that require any employer that provides emergency medical services as part of an emergency medical service system or plan to adopt a workplace violence prevention plan as a part of the employer’s injury and illness prevention plan to protect system workers from aggressive and violent behavior. The bill would require the standards to include prescribed elements. The bill would require the division and the authority, by on or before January 1, 2020, 2019, and annually thereafter, to post a report on their respective *its* Internet Web-sites *site* containing specified information regarding violent incidents ~~at hospitals. involving EMS providers in the performance of their duties.~~~~

The bill would exempt certain public employers from these provisions.

~~Because this bill would expand the scope of a crime, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~*no*.

The people of the State of California do enact as follows:

1 SECTION 1. Section 226.9 is added to the Labor Code, to
2 read:

1 226.9. (a) An employer that provides emergency medical
2 services as part of an emergency medical services system or plan,
3 as defined in Division 2.5 (commencing with Section 1797) of the
4 Health and Safety Code, shall authorize and permit its employees
5 engaged in prehospital emergency services to take rest periods,
6 which, to the extent practicable, shall be in the middle of each
7 work period. The duration of the authorized rest period shall be
8 based on the total hours worked daily at the rate of 10 minutes net
9 rest time per four hours or major fraction thereof. However, a rest
10 period need not be authorized for an employee whose total daily
11 work time is less than three and one-half hours. Authorized rest
12 period time shall be counted as hours worked for which there shall
13 be no deduction from wages.

14 (b) During the authorized rest period set forth in subdivision
15 (a), an employer shall relieve an employee of all duties and
16 relinquish control over how the employee ~~spend~~ *spends* his or her
17 time, and shall not require that the employee remain on call.

18 (c) (1) An employer may interrupt a rest period under this
19 section requiring an employee to terminate a rest period and resume
20 work if either of the following occur:

21 (A) The employer receives an emergency call in response to
22 which the operators of the emergency vehicle in which the
23 employee works would sound a siren and make visible the vehicle's
24 emergency lights.

25 (B) An unforeseeable, natural, or man-made disaster.

26 (2) In the event that rest period is interrupted pursuant to
27 paragraph (1), the employer shall pay the employee one hour of
28 pay at the employee's regular rate of compensation for each
29 workday during which the rest period is interrupted, and shall
30 provide an equivalent rest period as soon as practicable thereafter
31 during the employee's shift.

32 (d) An employer described in subdivision (a) shall include, as
33 part of the itemized statement the employer is required to furnish
34 pursuant to subdivision (a) of Section 226, the total hours or pay
35 owed to the employee on account of an interrupted rest period as
36 set forth in subdivision (c), as well as the total hours or pay owed
37 to the employee on account of a rest period missed for any other
38 reason.

1 (e) This section shall not apply to employees directly employed
2 by the state or any political subdivision thereof, including any city,
3 county, or special district.

4 SEC. 2. Section 226.10 is added to the Labor Code, to read:

5 226.10. (a) An employer that provides emergency medical
6 services as part of an emergency medical services system or plan,
7 as defined in Division 2.5 (commencing with Section 1797) of the
8 Health and Safety Code, shall provide an employee engaged in
9 prehospital emergency services for a work period of more than
10 five hours per day with a meal period of not less than 30 minutes,
11 except that if the total work period per day of the employee is no
12 more than six hours, the meal period may be waived by mutual
13 consent of both the employer and employee.

14 (b) During the meal period set forth in subdivision (a), an
15 employer must relieve an employee of all duties and relinquish
16 control over how the employee spends his or her time, and shall
17 not require that the employee remain on call.

18 (c) (1) An employer may interrupt a meal period under this
19 section requiring an employee to terminate a *rest meal* period and
20 resume work if either of the following occurs:

21 (A) The employer receives an emergency call in response to
22 which the operators of the emergency vehicle in which the
23 employee works would sound a siren and make visible the vehicle's
24 emergency lights.

25 (B) An unforeseeable, natural, or man-made disaster.

26 (2) In the event that a meal period is interrupted pursuant to
27 paragraph (1), the employer shall pay the employee one hour of
28 pay at the employee's regular rate of compensation for each
29 workday during which the rest period is interrupted, and shall
30 provide an equivalent meal period as soon as practicable thereafter
31 during the employee's shift. This subdivision shall apply regardless
32 of whether the employee and employer have entered into a written
33 agreement regarding an "on duty" meal period described in
34 paragraph ~~(A)~~ (C) of Section 11 of Wage Order ~~49~~ of the Industrial
35 Welfare Commission (8 Cal. Code Regs. ~~11040~~ 11090).

36 (d) An employer described in subdivision (a) shall keep accurate
37 time records showing when an employee begins and ends each
38 meal period regardless of whether the period is interrupted. The
39 records shall be available for inspection by the employee upon
40 reasonable request.

1 (e) An employer described in subdivision (a) shall include, as
2 part of the itemized statement the employer is required to furnish
3 pursuant to subdivision (a) of Section 226, the total hours or pay
4 owed to the employee on account of an interrupted meal period as
5 set forth in subdivision (c), as well as the total hours or pay owed
6 to the employee on account of a meal period missed for any other
7 reason.

8 (f) This section shall not apply to employees directly employed
9 by the state or any political subdivision thereof, including any city,
10 county, or special district.

11 ~~SEC. 3. Section 6401.9 is added to the Labor Code, to read:~~

12 ~~6401.9. (a) As used in this section:~~

13 ~~(1) "EMS provider" means an employer that provides emergency~~
14 ~~medical services as part of an emergency medical services system~~
15 ~~or plan as defined in Division 2.5 (commencing with Section 1797)~~
16 ~~of the Health and Safety Code.~~

17 ~~(2) "EMS employee" means an employee of an EMS provider,~~
18 ~~as defined in paragraph (1).~~

19 ~~(b) The standards board, no later than July 1, 2019, shall adopt~~
20 ~~standards developed by the division that require any employer that~~
21 ~~provides emergency medical services as part of an emergency~~
22 ~~medical services system or plan as defined in Division 2.5~~
23 ~~(commencing with Section 1797) of the Health and Safety Code~~
24 ~~to adopt a workplace violence prevention plan as a part of its injury~~
25 ~~and illness prevention plan to protect emergency medical system~~
26 ~~workers from aggressive and violent behavior.~~

27 ~~(c) The standards adopted pursuant to subdivision (b) shall~~
28 ~~include all of the following:~~

29 ~~(1) A requirement that the workplace violence prevention plan~~
30 ~~be in effect at all times in all areas where emergency medical~~
31 ~~services are provided.~~

32 ~~(2) A definition of workplace violence that includes, but is not~~
33 ~~limited to, both of the following:~~

34 ~~(A) The use of physical force against an EMS employee by a~~
35 ~~patient or a person accompanying a patient that results in, or has~~
36 ~~a high likelihood of resulting in, injury, psychological trauma, or~~
37 ~~stress, regardless of whether the employee sustains an injury.~~

38 ~~(B) An incident involving the use of a firearm or other dangerous~~
39 ~~weapon, regardless of whether the employee sustains an injury.~~

- 1 ~~(3) A requirement that a workplace violence prevention plan~~
2 ~~include, but not be limited to, all of the following:~~
- 3 ~~(A) Personnel education and training policies that require all~~
4 ~~EMS employees who provide direct care to patients to, at least~~
5 ~~annually, receive education and training that is designed to provide~~
6 ~~an opportunity for interactive questions and answers with a person~~
7 ~~knowledgeable about the workplace violence prevention plan. The~~
8 ~~education and training shall cover topics that include, but are not~~
9 ~~limited to, the following topics:~~
- 10 ~~(i) How to recognize potential for violence, and when and how~~
11 ~~to seek assistance to prevent or respond to violence.~~
- 12 ~~(ii) How to report violent incidents to law enforcement.~~
- 13 ~~(iii) Any resources available to employees for coping with~~
14 ~~incidents of violence, including, but not limited to, critical incident~~
15 ~~stress debriefing or employee assistance programs.~~
- 16 ~~(B) A system for responding to and investigating violent~~
17 ~~incidents and situations involving violence or the risk of violence.~~
- 18 ~~(C) A system to, at least annually, assess and improve upon~~
19 ~~factors that may contribute to, or help prevent, workplace violence,~~
20 ~~including, but not limited to, the following factors:~~
- 21 ~~(i) Staffing, including staffing patterns and patient classification~~
22 ~~systems that contribute to, or are insufficient to address, the risk~~
23 ~~of violence.~~
- 24 ~~(ii) Sufficiency of security systems, including alarms, emergency~~
25 ~~response, and security personnel availability.~~
- 26 ~~(iii) Job design, equipment, and facilities.~~
- 27 ~~(iv) Security risks associated with specific emergency medical~~
28 ~~services units.~~
- 29 ~~(4) A requirement that all workplace violence prevention plans~~
30 ~~be developed in conjunction with affected employees, including~~
31 ~~their recognized collective bargaining agents, if any.~~
- 32 ~~(5) A requirement that all temporary personnel be oriented to~~
33 ~~the workplace violence prevention plan.~~
- 34 ~~(6) Provisions prohibiting an EMS provider from disallowing~~
35 ~~an EMS employee from, or taking punitive or retaliatory action~~
36 ~~against an EMS employee for, seeking assistance and intervention~~
37 ~~from local emergency services or law enforcement when a violent~~
38 ~~incident occurs.~~
- 39 ~~(7) A requirement that EMS providers document, and retain for~~
40 ~~a period of five years, a written record of any violent incident~~

1 against an EMS employee, regardless of whether the employee
2 sustains an injury, and regardless of whether the report is made by
3 the EMS employee who is the subject of the violent incident or
4 any other employee.

5 (8) A requirement that an EMS provider report violent incidents
6 to the division. If the incident results in injury, involves the use of
7 a firearm or other dangerous weapon, or presents an urgent or
8 emergent threat to the welfare, health, or safety of EMS employees,
9 the EMS provider shall report the incident to the division within
10 24 hours. All other incidents of violence shall be reported to the
11 division within 72 hours.

12 (d) By January 1, 2020, and annually thereafter, the division,
13 in a manner that protects patient and employee confidentiality,
14 shall post a report on its Internet Web site containing information
15 regarding violent incidents involving EMS providers that includes,
16 but is not limited to, the total number of reports, and which specific
17 employers filed reports, pursuant to paragraph (8) of subdivision
18 (e), the outcome of any related inspection or investigation, the
19 citations levied against an employer based on a violent incident,
20 and recommendations of the division on the prevention of violent
21 incidents involving EMS providers. The Emergency Medical
22 Services Authority, as established in Article 1 (commencing with
23 Section 1797.100) of the Health and Safety Code, shall also post
24 annually a report on its Internet Web site meeting the same
25 specifications.

26 (e) This section does not limit the authority of the standards
27 board to adopt standards to protect employees from workplace
28 violence. Nothing in this section shall be interpreted to preclude
29 the standards board from adopting standards that require other
30 employers, including, but not limited to, employers exempted from
31 this section by subdivision (f), to adopt plans to protect employees
32 from workplace violence. Nothing in this section shall be
33 interpreted to preclude the standards board from adopting standards
34 that require an employer subject to this section, or any other
35 employer, to adopt a workplace violence prevention plan that
36 includes elements or requirements additional to, or broader in
37 scope than, those described in this section.

38 (f) This section shall not apply to the state or any political
39 subdivision thereof, including any city, county, or special district,
40 in its capacity as the direct employer of an EMS employee.

1 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

10 *SEC. 3. Section 6401.9 is added to the Labor Code, to read:*

11 *6401.9. (a) On or before January 1, 2019, and annually*
12 *thereafter, the Emergency Medical Services Authority, as*
13 *established in Article 1 (commencing with Section 1797.100) of*
14 *the Health and Safety Code, in a manner that protects patient and*
15 *employee confidentiality, shall post a report on its Internet Web*
16 *site containing information regarding violent incidents involving*
17 *EMS providers in the performance of their duties that includes, at*
18 *a minimum, the following items:*

19 *(1) Employer name, site address, employer representative,*
20 *telephone number, and email address, and the name, representative*
21 *name, and contact information for any other employer of employees*
22 *affected by the incident.*

23 *(2) Date, time, and specific location of the incident.*

24 *(3) A brief description of the incident, including, but not limited*
25 *to, the type of attacker, the type of physical assault, the type of*
26 *weapon or object used by the attacker, if any, working conditions*
27 *at the time of attack, and whether the assaulted employee was*
28 *alone or isolated immediately prior to the incident.*

29 *(4) The number of employees injured and the types of injuries*
30 *sustained.*

31 *(5) Whether security or law enforcement was contacted, and*
32 *how security or law enforcement assisted an employee.*

33 *(6) Whether there is a continuing threat, and if so, what*
34 *measures are being taken to protect employees including, but not*
35 *limited to, engineering control modifications and work practice*
36 *modifications.*

37 *(b) For purposes of this section, “EMS provider” means an*
38 *employer that provides prehospital emergency medical services*
39 *as part of an emergency medical services system or plan as defined*
40 *in Division 2.5 (commencing with Section 1797) of the Health and*

- 1 *Safety Code, but shall not include the state or any political*
- 2 *subdivision thereof, including any city, county, or special district,*
- 3 *in its capacity as the direct employer of an EMS employee.*

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