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**SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT****Senator Dave Cortese, Chair****2023 - 2024 Regular**

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<b>Bill No:</b>	SB 41	<b>Hearing Date:</b>	February 9, 2023
<b>Author:</b>	Cortese		
<b>Version:</b>	February 8, 2023		
<b>Urgency:</b>	Yes	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Alma Perez-Schwab		

**SUBJECT:** Meal and rest breaks: cabin crew employees

### **KEY ISSUES**

Should existing meal and rest break laws be amended to provide an exemption accommodating the unique nature of cabin crew employees as long as they are covered by a valid collective bargaining agreement meeting specified criteria?

Should the Legislature, commencing on December 5, 2022, the bill's introduction date, prohibit a person from filing a new legal action by or on behalf of a person covered under an eligible CBA asserting a claim for alleged meal or rest break violations?

Should it be clear that this exemption does not affect a settlement agreement or final judgment of any civil action brought by a cabin crew employee, or class, against an employer on a claim of a meal or rest break violation?

### **ANALYSIS**

#### **Existing law:**

- 1) Empowers the Labor Commissioner's office, within the Department of Industrial Relations, with ensuring a just day's pay in every workplace in the State and promotes economic justice through robust enforcement of labor laws. (Labor Code §79-107)
- 2) Defines a full workday as 8 hours, and 40 hours as a workweek and requires overtime to be paid at the rate of no less than one and one-half times an employee's regular rate of pay for work performed beyond 8 hours in a day or 40 hours in a week. Furthermore, work performed beyond 12 hours in a day is to be compensated at twice the regular rate of pay. (Labor Code §510)
- 3) Requires, with certain exemptions, that all private sector employees be provided a meal period as follows:
  - a. 30 minutes every 5 hours, except if the total work period is no more than 6 hours, the meal period may be waived by mutual consent.
  - b. A second 30 minute meal period if working more than 10 hours a day, except if the work period is no more than 12 hours, the second meal period may be waived by mutual consent, but only if the first was not waived. (Labor Code §512)
- 4) Requires that employers authorize and permit employees to take rest periods based on the total hours worked daily at the rate of ten (10) minutes net rest time per four hours or

major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half hours (3½). Authorized rest period time must be counted as hours worked for which there shall be no deduction from wages. (IWC Wage Orders 1-16)

- 5) Prohibits an employer from requiring an employee to work during a meal or rest or recovery period (cooldown period required for heat illness prevention) mandated pursuant to statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Board, or the Division of Occupational Safety and Health. (Labor Code §226.7)
- 6) Provides that, if an employer fails to provide a meal or rest or recovery period as required by state law or applicable regulation, standard or IWC order, the employer must pay the employee *one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.* (Labor Code §226.7)
- 7) Specifies that unless the employee is relieved of all duty during their meal period, the meal period is considered "on duty" that is counted as hours worked which must be compensated at the employee's regular rate of pay. An "on duty" meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the employer and employee an on-the-job paid meal period is agreed to. The written agreement must state that the employee may, in writing, revoke the agreement at any time. (IWC Wage Orders 1-16)

**This bill:**

- 1) Provides that the existing meal and rest period requirements in law (including applicable wage orders, regulations or ordinances) do not apply to cabin crew employees if the employee meets either of the following conditions:
  - a. The employee is covered by a valid collective bargaining agreement (CBA) under the Railway Labor Act (45 U.S.C. Sec. 151 et seq.) and that agreement contains any provision addressing meal and rest periods for cabin crew employees.
  - b. The employee is organized pursuant to the Railway Labor Act (45 U.S.C. Sec. 151 et seq.) but is not yet covered by a valid collective bargaining agreement described above, for, at minimum, the first 12 months of organization, or for longer than the first 12 months of organization if agreed upon in writing by the employer and the labor organization representing the employee.
- 2) Specifies that a CBA meets the requirements for this exemption if the agreement contains any provision providing for meal and rest periods; providing compensation in lieu of meals, or per diem, which may be in lieu of meals; or providing a recognition of a right to eat on board an aircraft during the course of a duty day.
- 3) Specifies that, notwithstanding any other law, commencing December 5, 2022, a person shall not file a new legal action by or on behalf of a person covered by a collective

bargaining agreement, meeting the above referenced requirements, asserting a claim for alleged meal or rest break violations.

- 4) Specifies that these provisions shall not affect a settlement agreement or final judgment of any civil action brought by a cabin crew employee, or class thereof, against an employer on a claim of a meal or rest break violation.
- 5) Includes an urgency clause stating its necessity to protect the public by avoiding disruptions to passenger air travel and shall go into immediate effect.

## COMMENTS

### 1. Background: *Bernstein v. Virgin America, Inc.*

In 2015, under *Bernstein v. Virgin America, Inc.*, a class action was brought by flight attendants claiming the airline violated California law by failing to pay minimum wage, overtime, and wages for all hours worked, failing to provide required meal periods, rest periods, and accurate wage statements, failing to pay waiting time penalties to discharged employees, and failing to indemnify all necessary business expenditures. The key issue in question was whether California's wage and hour laws applied to flight crews. Virgin America argued federal preemption (under the Federal Aviation Act (FAA) and the Airline Deregulation Act) to justify inapplicability of these laws – particularly the state's meal and rest break requirements.

The class members, all of whom were based in California, spent approximately 31.5% of their time working within California's borders. No class members spent more than 50% of their time in other states nor did they work in any other state more than they worked in California. In November 2016, the district court held that Plaintiffs' satisfied the requirements for a class action. In July 2018, the district court granted Plaintiffs' Motion for Summary Judgment in large part holding, among other things, that the California Labor Code applied to all work performed in California.

#### *Ninth Circuit ruling:*

Virgin argued federal preemption to avoid application of California's wage and hour laws and sought to reverse the district court's ruling that its block time compensation plan violated the state's minimum wage law. On February, 23, 2021, the Ninth Circuit issued a decision that was a mixed bag for airline employers. *Bernstein v. Virgin Am., Inc.*, No. 19-15382, 2021 WL 867583 (9th Cir. Feb. 23, 2021). Among others, the decision made several key findings:

- 1) The panel determined that the dormant Commerce Clause (aimed at barring state protectionism and used to prohibit state legislation that discriminates against interstate or international commerce) did not bar application of the California labor code to interstate employers, and that relevant federal statutes did not preempt the labor code's application to interstate employers operating across state lines. ***Therefore, airline employers with workers in California must comply with California wage and hour laws.***

- 2) The panel affirmed the district court's grant of summary judgment ruling in Plaintiff's favor on their overtime claims, finding that California law applies.
- 3) The panel affirmed the district court's summary judgment ruling in Plaintiffs' favor on their meal and rest break claims, finding that the Federal Aviation Administration Authorization Act and the Airline Deregulation Act do not preempt the applicability of California Labor Code.
- 4) Regarding wage statements, the panel held that airline employers must provide California compliant wage statements to employees working across state lines.
- 5) Similarly, the panel affirmed the district court's summary judgment to Plaintiffs on their waiting time penalties claim (for failure of an employer to provide a former employees due wages at the time of discharge or if quitting, within 72 hours), also specifying that California law must be followed.

### *SCOTUS Denies Appeal*

Alaska Airlines, which acquired Virgin America, appealed the decision to the U.S. Supreme Court and on June 30, 2022, the SCOTUS issued a ruling denying the appeal and leaving in place the lower court ruling.

## **2. FAA and Existing Meal and Rest Break Law:**

The Federal Aviation Administration (FAA) sets safety standards for airlines, including minimum rest requirements for both pilots and flight attendants to guard against fatigue that could lead to accidents. Airlines are allowed to schedule flight crews on regularly assigned duty periods of no more than 14 hours with at least 10 hours of rest time in between work shifts. Under FAA regulations, flight crews are able to take meal breaks; however, they must remain on duty for the duration of the flight and prepared to respond to emergencies. California's labor law requires employees to be considered "off duty" during meal and rest breaks. Further, the statute requires an employee must be able to leave the premises, which is not possible for employees who are inflight.

As noted above, specified under current wage orders, unless the employee is relieved of all duty during their meal period, the meal period is considered "on duty" that is counted as hours worked which must be compensated at the employee's regular rate of pay. An "on duty" meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the employer and employee an on-the-job paid meal period is agreed to. Missed meal breaks entitle employees to one hour of pay.

Existing law recognizes the unique nature of some occupations and the need for industry specific provisions for compliance with wage and hour laws. Among a few others, existing law includes provisions for specified commercial drivers, construction workers, security service employees, and motion picture industry employees. A key element in these provisions is that the employees must be covered by a valid collective bargaining agreement that provides for meal periods and includes a monetary remedy for meal periods not received.

### 3. Need for this bill?

According to the author, “SB 41 reflects an agreement between airline cabin crew labor unions and airlines that has been negotiated following a court ruling (*Bernstein v. Virgin America*) which found commercial airline employees are subject to California’s meal and rest break law (CA MRB). Cabin crew employees take meal and rest breaks while in flight, but remain “on duty” according to federal regulations, and of course, employees cannot leave the premises during a flight.

SB 41 allows flight attendants to negotiate meal and rest break benefits while providing their respective employers the ability to comply with California law. Flight attendants without CBA’s would maintain their right to use the legal system. This measure provides a course correction for incompatible state law and federal regulations. At the same time, flight attendants would have access to meal and rest benefits no matter where their work takes them.”

Moreover, the author argues, “The liability for airlines is significant, and as such, some airlines are likely to move California-based employees to other states to accommodate medium to long-haul direct flights out of California without violating California law. In turn, employees who remain in California would be limited to short haul flights less than three hours. These cabin crew members would be unable to “bid” on longer flights which are more desirable with greater compensation.

As a result, organized cabin crew employee associations approached the airlines to find a resolution. With approximately 80% of cabin crew employees organized in California, this resolution provides the option for compliance if an airline has a CBA that includes meal and rest provisions. Cabin crew employees who are not organized would retain the ability to file claims.”

This bill will provide an exemption from existing meal and rest period requirements for CBA covered cabin crew employees, recognizing the unique nature of the industry while not impacting legal actions filed before the December 5, 2022 bill introduction date.

### 4. Proponent Arguments:

The sponsors of the measure, a coalition of commercial airlines and labor organizations, write “Under the Meal and Rest Break [MRB], employees must be allowed to leave the work premises and must be considered “off-duty” when they take a meal or rest break. The MRB, as written, is incompatible with the realities of cabin crew employees. It is unworkable for cabin crew employees to leave the work premises. Federal Aviation Administration (FAA) regulations require that cabin crews remain “on-duty” for flight and passenger safety purposes during all phases of flight, including boarding and deplaning periods. For this reason, an alternative MRB compliance structure needs to be established that takes into account the nature of aircraft work environments and duty day of cabin crew employees.

SB 41, which reflects months of negotiations between commercial airlines and labor organizations representing cabin crew employees, seeks to address this legal conflict between California law and FAA regulations. The bill provides commercial airlines with a clear and implementable compliance standard, while also ensuring that their cabin crew employees receive the critical protections they so deserve.”

**5. Opponent Arguments:**

None received.

**6. Double Referral:**

This bill has been double referred and if passed by our committee today, will be sent to Senate Judiciary Committee for a hearing.

**7. Prior Legislation:**

SB 1334 (Chapter 845, Statutes of 2022): Entitles employees providing direct patient care in general acute care hospitals, clinics or public health facilities to meal and rest breaks, unless they are covered by a CBA.

AB 736 (Chapter 44, Statutes of 2020): This bill provides an exemption for certain higher education instructors, if certain conditions are met, including salary conditions and are subject to CBAs.

AB 2605 (Chapter 584, Statutes of 2018): Allows employers to require that employees holding safety-sensitive positions at petroleum facilities be on-call and carry instant communication devices during rest periods. This exception applies only at petroleum facilities covered under Wage Order 1.

AB 2610 (Chapter 148, Statutes of 2018): This bill authorized commercial drivers employed by a motor carrier transporting nutrients and byproducts from a licensed commercial feed manufacturer to a customer located in a remote rural location to commence a meal period after 6 hours of work, if the regular rate of pay of the driver is no less than one and one-half times the state minimum wage and the driver receives overtime compensation in accordance with specific provisions of existing law.

Proposition 11 (2018): Allows emergency ambulance employees to remain on call throughout the duration of their shifts, including during paid meal and rest breaks. Employees include emergency medical technicians (EMTs), dispatchers, paramedics, or other licensed or certified ambulance transport personnel who contribute to the delivery of ambulance services.

**SUPPORT**

Alaska Airlines (Co-Sponsor)  
American Airlines (Co-Sponsor)  
Association of Flight Attendants (Co-Sponsor)  
Association of Professional Flight Attendants (Co-Sponsor)  
Southwest Airlines (Co-Sponsor)  
Transport Workers Union of America (Co-Sponsor)  
United Airlines (Co-Sponsor)  
California Chamber of Commerce  
Silicon Valley Leadership Group

**OPPOSITION**

None received

**-- END --**