

S224853

SUPREME COURT OF CALIFORNIA

JENNIFER AUGUSTUS et al.,

Plaintiffs and Respondents,

v.

ABM SECURITY SERVICES, INC.,

Defendant and Appellant.

2d Civil Nos. B243788 & B247392

(Los Angeles County
Super. Ct. Nos. BC336416, BC345918,
CG5444421)

SUPREME COURT
FILED

**RESPONDENTS' MOTION FOR JUDICIAL NOTICE;
AND (PROPOSED) ORDER**

JUN 30 2015

Frank A. McGuire Clerk

Deputy

After a Decision by the Court of Appeal
Second Appellate District, Division One

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MOTION

PLEASE TAKE NOTICE that, pursuant to Evidence Code sections 451, 452(a)-(d) and (h), 459, and California Rules of Court 8.252(a) and 8.520(g), respondents respectfully request that the Court take judicial notice of the following documents:

- Exhibit 1: Excerpts of AB 2509, section 12 (Feb. 24, 2000);
- Exhibit 2: IWC, Rest Periods – Order 4-76; and
- Exhibit 3: AB 111 Review of Existing Regulations (Aug. 24, 1982).

MEMORANDUM OF POINTS AND AUTHORITIES

Respondents respectfully request judicial notice of the above-described documents, which are true and correct copies of official records of the Industrial Welfare Commission or pertain to the legislative history of Labor Code section 226.7.

A. Requirements of California Rules of Court, Rule 8.252

California Rules of Court, section 8.252(a)(2) requires a party seeking judicial notice to file a motion that states:

- (A) Why the matter to be noticed is relevant to the appeal;
- (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court;
- (C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453; and
- (D) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

B. Why the requirements of California Rules of Court, Rule 8.252, are met here

All of the materials for which judicial notice is sought are relevant to the substantial questions of statutory and regulatory interpretation that this case raises.

When interpreting statutes or regulations, courts consider a variety of indicia of legislative or regulatory intent, including past versions of the statute or regulation and findings and minutes of the governmental agencies that drafted the statute or regulation.

All of the documents for which judicial notice is sought reflect official acts of the Industrial Welfare Commission or pertain to the legislative history of Labor Code section 226.7 in connection with specific issues concerning the interpretation of the rest period requirement before this Court and are the proper subject of judicial notice under Evidence Code section 452(c). They are also the proper subject of judicial notice under Evidence Code section 452(h) in that they are “not reasonably subject to dispute and are capable of immediate and accurate determination by resort” to official government records.

Courts routinely take judicial notice of the types of materials for which judicial notice is sought here. (See, e.g., *Associated Builders & Contractors, Inc.* (1999) 21 Cal.4th 352, 374 fn. 4 [transcripts and other administrative agency records]; *California School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 26-27 [findings, minutes, orders]; *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 956 fn. 11 [DLSE Opinion Letters].)

Respondents do not believe that the matters for which judicial notice is sought were presented to the trial court in this case.

CONCLUSION

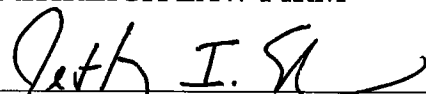
For the reasons set forth above, respondents respectfully request that the Court take judicial notice of the materials described herein above.

Dated: June 29, 2015.

Respectfully submitted,

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& ADREANI, LLP

THE EHRLICH LAW FIRM

By 

Jeffrey I. Ehrlich

Attorneys for Plaintiffs and

Respondents Jennifer Augustus, et al.

S224853

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**(PROPOSED) ORDER GRANTING
RESPONDENTS' REQUEST FOR JUDICIAL NOTICE**

The request for judicial notice filed by respondents, having been filed, and grounds for judicial notice appearing warranted under Evidence Code sections 451, 452, and/or 459:

IT IS HEREBY ORDERED that respondents' request for judicial notice is granted, and the Court takes judicial notice of all of the documents identified and attached to respondents' request for judicial notice as Exhibits 1 through 3, as follows:

- Exhibit 1: Excerpts of AB 2509, section 12 (Feb. 24, 2000);
- Exhibit 2: IWC, Rest Periods – Order 4-76; and
- Exhibit 3: AB 111 Review of Existing Regulations (Aug. 24, 1982).

Date: _____.

Presiding Justice



ASSEMBLY BILL

No. 2509

Introduced by Assembly Member Steinberg

February 24, 2000

An act to amend Sections 92, 98.1, 98.2, 98.7, 203.1, 218.5, 226, 226.3, 240, 350, 351, 1174, 1174.5, 1194.2, and 1197.1 of, and to add Sections 100.6, 100.7, 218.6, 226.7, and 245 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2509, as introduced, Steinberg. Employment: remedies for employment law violations.

Existing law authorizes the Labor Commissioner, his or her deputies, and agents to issue subpoenas for the purpose of carrying out the laws which the Division of Labor Standards Enforcement is responsible for enforcing.

This bill would authorize using a prescribed notice in lieu of a subpoena in adjudicatory proceedings before the Labor Commissioner to compel attendance of a party, person for whose benefit the proceeding is prosecuted or defended, or any officer, director, or managing agent thereof. The notice would have the same force and effect as a subpoena.

Existing law authorizes the Labor Commissioner to conduct administrative hearings and issue orders, decisions, and awards for recovery of wages, penalties, and other demands for compensation properly before the Division of Labor Standards Enforcement or the commissioner. Existing law requires these awards for unpaid wages to accrue interest at

(800) 666-1917

LEGISLATIVE INTENT SERVICE



1 SEC. 11. Section 226.3 of the Labor Code is amended
2 to read:

3 226.3. Any employer ~~who~~ that violates subdivision (a)
4 of Section 226 shall be subject to a civil penalty in the
5 amount of two hundred fifty dollars (\$250) per employee
6 per violation in an initial citation and one thousand dollars
7 (\$1,000) per employee for each violation in a subsequent
8 citation, for which the employer fails to provide the
9 employee a wage deduction statement or fails to keep the
10 records required in subdivision (a) of Section 226. *In the*
11 *event that an employer fails to maintain records that*
12 *identify each employee to whom wages are paid, the*
13 *penalties under this section shall be computed by*
14 *multiplying the number of employees employed on the*
15 *date the penalty is assessed by the 24 semimonthly pay*
16 *periods of the immediately preceding 12 months, but the*
17 *employer may affirmatively establish that the evidence*
18 *supports a lesser penalty based upon proof of a lesser*
19 *number of affected employees.* The civil penalties
20 provided for in this section are in addition to any other
21 penalty provided by law. In enforcing this section, the
22 Labor Commissioner shall take into consideration
23 whether the violation was inadvertent; and, in his or her
24 discretion, may decide not to penalize an employer for a
25 first violation when that violation was due to a clerical
26 error or inadvertent mistake.

27 SEC. 12. Section 226.7 is added to the Labor Code, to
28 read:

29 226.7. (a) No employer shall require any employee to
30 work during any meal or rest period mandated by an
31 applicable order of the Industrial Welfare Commission.

32 (b) An employer that violates this section shall be
33 subject to both of the following:

34 (1) A civil penalty of fifty dollars (\$50) per employee
35 per violation.

36 (2) Payment to the aggrieved employee of an amount
37 equal to twice his or her average hourly rate of
38 compensation for the full length of the meal or rest
39 periods during which the employee was required to
40 perform any work. An employee paid on a piecework

1 basis shall be entitled to an amount equal to twice the
2 amount of piecework units earned during those periods,
3 but in no event shall the amount be less than the
4 applicable state minimum wage for the full length of
5 those time periods during which any work was
6 performed.

7 (c) Any employee aggrieved by a violation of this
8 section may do either of the following:

9 (1) Seek recovery of payments under paragraph (2) of
10 subdivision (b) through a complaint filed pursuant to
11 subdivision (a) of Section 98.

12 (2) Seek recovery of payments under paragraph (2) of
13 subdivision (b) in a civil action. The court shall award a
14 prevailing plaintiff in such an action reasonable
15 attorney's fees.

16 SEC. 13. Section 240 of the Labor Code is amended to
17 read:

18 240. (a) If any employer has been convicted of a
19 violation of any provision of this article, or if any
20 judgment against an employer for ~~nonpayment of unpaid~~
21 *wages, interest, penalties, or other demands for*
22 *compensation within the jurisdiction of the Labor*
23 *Commissioner* remains unsatisfied for a period of 10 days
24 after the time to appeal therefrom has expired, and no
25 appeal therefrom is then pending, the Labor
26 Commissioner may require the employer to deposit a
27 bond in ~~such a sum as that~~ the Labor Commissioner ~~may~~
28 ~~deem~~ *deems* sufficient and adequate in the
29 circumstances, ~~to be approved by the Labor~~
30 ~~Commissioner~~. The bond shall be payable to the Labor
31 Commissioner and shall be conditioned that the
32 employer shall, for a definite future period, not exceeding
33 six months, pay the employees in accordance with the
34 provisions of this article, and shall be further conditioned
35 upon the payment by the employer of any *unsatisfied*
36 ~~judgment which may be recovered~~ against the employer
37 ~~pursuant to the provisions of this article for unpaid wages,~~
38 *interest, penalties, or other demands within the*
39 *jurisdiction of the Labor Commissioner.*

(800) 666-1917

LEGISLATIVE INTENT SERVICE





With regard to Section 12, Rest Periods:

Although relief periods were required by the IWC in 1932 where toilets were distant from the work place or where employees were required to stand, the general ten-minute rest period was introduced, in addition, in 1947. Authorization to dispense with such rest periods when work totals $3\frac{1}{2}$ hours or less has been included since 1952. The Commission sees no reason to change its earlier findings that the general health and welfare of employees requires periods of rest during long stretches of physical and/or mental exertion. The provisions of this section have proved to be reasonable and minimal.

Some wage boards recommended changing the 10 minutes to 15 and even 20 minutes in consideration of the practice in many industries of going to a special area for coffee. Some employer representatives argued that a 15-minute break would tend to be longer than that. The Commission did not deem it necessary to so extend the rest time, but it did allow a little leeway for going and coming in specifying "net" rest time. In response to arguments that in some situations workers are almost continually resting while they monitor machines and cannot be spared from their places, the Commission provides for the possibility of exemptions in accord with the requirements of Section 18.

REST PERIODS

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FINAL DRAFT
8/24/82

INDUSTRIAL WELFARE COMMISSION'S

AB 1111 REVIEW OF EXISTING REGULATIONS

796429106

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WAGE ORDERS SECTION 12: REST PERIODS

Text: Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) 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 (3-1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

Section: Section 12 of all Wage Orders.

Text: (B) Swimmers, dancers, skaters and other performers engaged in strenuous physical activities shall have additional interim rest periods of actual rehearsal or shooting.

Section: (12-80) § 11280 (12) (B)

PUBLIC COMMENTS RECEIVED:

Chevron USA believes that Section 12 lacks authority and consistency in that issues of rest periods are mandatory subjects of collective bargaining.

Kaiser Steel believes that Section 12 lacks necessity as applied to workers whose terms and conditions of employment are established in CBAs.

Caterpillar Tractor challenges the rest period regulations as being impractical and economically unfeasible.

IWC AB 1111 Analysis and Recommendation:

The IWC has considered the public comment received and offers the following response: As to comments regarding intrusion upon an area of collective bargaining, see pages 8-12 above.

As to the concerns of impracticality and economic unfeasibility, the commission does not find that the rest period provisions to be impractical or unfeasible or that the OAL criteria are not met. Moreover, Section 17 provides for exemption from the above regulation where hardship is found.

The IWC concludes that the above definitions meet the OAL criteria of necessity, authority, clarity, consistency, and reference, and recommends that these regulatory provisions be retained.

796429232

Lead Case: *Augustus, et al. v. ABM Security Services, Inc., etc.*
Supreme Court No. S224853
Court of Appeal No. B243788 (consolidated No. B247392)
Superior Court Case Nos.: Lead Case No. BC336416
[consolidated Case Nos. BC345918 and CGC5444421]

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 237 West Fourth Street, Second Floor, Claremont, California 91711.

On **June 29, 2015**, I served the foregoing documents described as **RESPONDENTS' MOTION FOR JUDICIAL NOTICE; (PROPOSED) ORDER** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

BY MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Claremont, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

ELECTRONIC Pursuant to CRC Rule 8.212(c)(2) and/or the Court's Local Rules, a copy was submitted electronically via the Court's website as indicated on the service list. Service copy was electronically submitted to the Attorney General via the Office of the Attorney General website.

BY FACSIMILE ("FAX") In addition to the manner of service indicated above, a copy was sent by FAX to the parties indicated on the service List.

BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **June 29, 2015**, at Claremont, California.



Isabel Cisneros-Drake, Paralegal

Lead Case: *Augustus, et al. v. ABM Security Services, Inc., etc.*
Supreme Court No. S224853
Court of Appeal No. B243788 (consolidated No. B247392)
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[consolidated case Nos. BC345918 and CGC5444421]

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