

AMENDED IN SENATE FEBRUARY 12, 2002

AMENDED IN SENATE SEPTEMBER 14, 2001

CALIFORNIA LEGISLATURE—2001-02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1677**

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**Introduced by Assembly Member Koretz**

February 28, 2001

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An act to amend Sections 221, 515, and 2674.1 of, to add Section 512.5 and 1172 to, and to repeal and add Section 515.6 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1677, as amended, Koretz. Garment manufacturing.

(1) Existing law prohibits an employer from collecting or receiving any portion of the wages paid by the employer to an employee.

This bill would prohibit employers from charging their employees a fee for cashing an employee's payroll check.

(2) Existing law requires private employers to provide meal periods and rest breaks at certain intervals to employees who operate commercial motor vehicles.

This bill would require that public employees who operate commercial motor vehicles be subject to the same regulations regarding meal and rest periods as their private employee counterparts.

(3) Existing law establishes the requirements for the payment of wages and overtime wages with specific exemptions for certain employees who earn a monthly salary.

This bill would clarify the definition of employees paid on a "monthly salary" as the term relates to existing law.

The bill would also provide that physician employees paid an hourly wage of \$55 or more are exempt from specified positions relating to pay for overtime work, except as specified.

(4) Existing law establishes specific requirements relating to the wages, hours and working conditions of employees in this state.

This bill would define the term “hours worked,” as used in regulations and orders adopted pursuant to existing law, to mean the time during which an employee is subject to the control of the employer, including all of the time that the employee is suffered or permitted to work, regardless of whether the employee is required to work.

(5) Existing law requires the Labor Commissioner to appoint an advisory committee on garment manufacturing.

This bill would require the commissioner to make the appointments to the garment manufacturing advisory committee by no later than January 31, 2002.

The bill would also make technical, nonsubstantive changes to existing law.

(6) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 221 of the Labor Code is amended to  
2 read:

3 221. (a) It is unlawful for any employer to collect or receive  
4 from an employee any part of wages theretofore paid by the  
5 employer to the employee.

6 (b) It is unlawful for any employer or agent of an employer to  
7 charge a fee for cashing a payroll check.



1 SEC. 2. Section 512.5 is added to the Labor Code, to read:

2 512.5. (a) An employee of a public agency who operates a  
3 commercial motor vehicle is subject to the same regulations of the  
4 Industrial Welfare Commission regarding meal periods and rest  
5 breaks as employees of a private employer engaged in the same  
6 occupation.

7 (b) For purposes of this section, “public agency” means the  
8 State of California and any political subdivision thereof, including  
9 any city, county, or special district.

10 (c) For purposes of this section, “commercial motor vehicle”  
11 has the same meaning as provided in subdivision (b) of Section  
12 15210 of the Vehicle Code.

13 SEC. 3. Section 515 of the Labor Code is amended to read:

14 515. (a) (1) The Industrial Welfare Commission may  
15 establish exemptions from the requirement that an overtime rate  
16 of compensation be paid pursuant to Sections 510 and 511 for  
17 executive, administrative, and professional employees, provided  
18 that the employee is primarily engaged in the duties that meet the  
19 test of the exemption, customarily and regularly exercises  
20 discretion and independent judgment in performing those duties,  
21 and earns a monthly salary equivalent to no less than two times the  
22 state minimum wage for full-time employment. The commission  
23 shall conduct a review of the duties that meet the test of the  
24 exemption. The commission may, based upon this review, convene  
25 a public hearing to adopt or modify regulations at that hearing  
26 pertaining to duties that meet the test of the exemption without  
27 convening wage boards. Any hearing conducted pursuant to this  
28 subdivision shall be concluded not later than July 1, 2000.

29 (2) (A) An employee is considered to be paid on a “monthly  
30 salary” if, under his or her employment agreement, he or she  
31 regularly receives each pay period, in accordance with this code,  
32 a predetermined amount constituting all or part of his or her  
33 compensation that is not subject to reduction because of variations  
34 in the quality or quantity of the work performed. Subject to the  
35 exceptions recognized in paragraphs (2), (3), (4), and (6) of  
36 subsection (a), and subsection (c) of Section 541.118 of Title 29  
37 the Code of Federal Regulations as in effect on September 1, 2001,  
38 the employee shall receive his or her full salary for any week in  
39 which he or she performs any work, without regard to the number  
40 of days or hours worked. If the employee does not receive that full



1 salary, the exemption provided under paragraph (1) shall not apply  
2 for that month. Notwithstanding this paragraph, the employee  
3 shall remain exempt if his or her employer deducts from the  
4 employee's predetermined monthly salary a pro rata amount of the  
5 predetermined monthly salary for each full week that the  
6 employee does not work as a result of the employer's failure to  
7 provide work. In no event may the exempt employee be paid less  
8 than the monthly salary amount required in paragraph (1) in any  
9 month.

10 (B) When requested by an employee, the employee's salary  
11 may be made up all or in part by paid time off benefits such as  
12 vacation, sick leave, jury duty leave, or military leave, for whole  
13 or partial day absences, but only to the extent that partial day  
14 absences are permitted under the provisions of paragraph (3) of  
15 subdivision (a) of Section 541.118 of Title 29 of the Code of  
16 Federal Regulations.

17 (C) An otherwise exempt employee will not be denied the  
18 exemptions as a result of his or her employer utilizing vested  
19 vacation wages to offset the requirements of leave taken pursuant  
20 to the Moore-Brown-Roberti Family Rights Act as provided in  
21 subdivision (e) of Section 12945.2 of the Government Code.

22 (b) (1) The commission may establish additional exemptions  
23 to hours of work requirements under this division where it finds  
24 that hours or conditions of labor may be prejudicial to the health  
25 or welfare of employees in any occupation, trade, or industry. This  
26 paragraph shall become inoperative on January 1, 2005.

27 (2) Except as otherwise provided in this section and in  
28 subdivision (g) of Section 511, nothing in this section requires the  
29 commission to alter any exemption from provisions regulating  
30 hours of work that was contained in any valid wage order in effect  
31 in 1997. Except as otherwise provided in this division, the  
32 commission may review, retain, or eliminate any exemption from  
33 provisions regulating hours of work that was contained in any  
34 valid wage order in effect in 1997.

35 (c) For the purposes of this section, "full-time employment"  
36 means employment in which an employee is employed for 40  
37 hours per week.

38 (d) For the purpose of computing the overtime rate of  
39 compensation required to be paid to a nonexempt full-time



1 salaried employee, the employee’s regular hourly rate shall be  
2  $\frac{1}{40}$ th of the employee’s weekly salary.

3 (e) For the purposes of this section, “primarily” means more  
4 than one-half of the employee’s worktime.

5 (f) (1) In addition to the requirements of subdivision (a),  
6 registered nurses employed to engage in the practice of nursing  
7 shall not be exempted from coverage under any part of the orders  
8 of the Industrial Welfare Commission, unless they individually  
9 meet the criteria for exemptions established for executive or  
10 administrative employees.

11 (2) This subdivision does not apply to any of the following:

12 (A) A certified nurse midwife who is primarily engaged in  
13 performing duties for which certification is required pursuant to  
14 Article 2.5 (commencing with Section 2746) of Chapter 6 of  
15 Division 2 of the Business and Professions Code.

16 (B) A certified nurse anesthetist who is primarily engaged in  
17 performing duties for which certification is required pursuant to  
18 Article 7 (commencing with Section 2825) of Chapter 6 of  
19 Division 2 of the Business and Professions Code.

20 (C) A certified nurse practitioner who is primarily engaged in  
21 performing duties for which certification is required pursuant to  
22 Article 8 (commencing with Section 2834) of Chapter 6 of  
23 Division 2 of the Business and Professions Code.

24 (D) Nothing in this paragraph shall exempt the occupations set  
25 forth in subparagraphs (A), (B), and (C) from meeting the  
26 requirements of subdivision (a).

27 SEC. 4. Section 515.6 of the Labor Code, as added by Section  
28 3 of Chapter 148 of the Statutes of 2001, is repealed.

29 SEC. 5. Section 515.6 is added to the Labor Code, to read:

30 515.6. (a) Section 510 does not apply to any employee who  
31 is a licensed physician or surgeon who is primarily engaged in  
32 duties that require licensure pursuant to Chapter 5 (commencing  
33 with Section 2000) of Division 2 of the Business and Professions  
34 Code, and whose hourly rate of pay is equal to or greater than  
35 fifty-five dollars (\$55.00). The Division of Labor Statistics and  
36 Research shall adjust this threshold rate of pay each October 1, to  
37 be effective the following January 1, by an amount equal to the  
38 percentage increase in the California Consumer Price Index for  
39 Urban Wage Earners and Clerical Workers.



1 (b) The exemption provided in subdivision (a) shall not apply  
2 to an employee employed in a medical internship or resident  
3 program or to a physician employee covered by a valid collective  
4 bargaining agreement pursuant to Section 514.

5 SEC. 6. Section 1172 is added to the Labor Code, to read:

6 1172. For the purpose of regulations and orders adopted  
7 pursuant to this chapter, "hours worked" means the time during  
8 which an employee is subject to the control of the employer and  
9 includes all of the time that the employee is suffered or permitted  
10 to work, regardless of whether the employee is required to work.

11 SEC. 7. Section 2674.1 of the Labor Code is amended to read:

12 2674.1. The commissioner shall, not later than January 31,  
13 2002, appoint an advisory committee on garment manufacturing  
14 to advise him or her of common industry problems and to effect  
15 liaison between his or her office and various segments of the  
16 industry. The committee shall consist of a cross section of the  
17 industry and shall include representatives of unions, employees,  
18 contractor associations, jobbers, and manufacturers.

19 ~~SEC. 8. Section 3 of this act is intended to clarify that, when  
20 the Legislature enacted AB 60 (Ch. 134, Stats. 1999), it did not  
21 intend to alter then existing law with respect to the salary  
22 deductions of employees who are exempt from the payment of  
23 overtime compensation when they are absent for leaves mandated  
24 or permitted by law, sickness, or vacation, or due to reduction in  
25 the employer's operations.~~

26 ~~SEC. 9.~~

27 SEC. 8. Section 6 of this act is declarative of existing law and  
28 shall not be deemed to alter, modify, or otherwise affect any  
29 provision of existing law or any wage order of the Industrial  
30 Welfare Commission.

31 ~~SEC. 10.~~

32 SEC. 9. Notwithstanding Section 17610 of the Government  
33 Code, if the Commission on State Mandates determines that this  
34 act contains costs mandated by the state, reimbursement to local  
35 agencies and school districts for those costs shall be made pursuant  
36 to Part 7 (commencing with Section 17500) of Division 4 of Title  
37 2 of the Government Code. If the statewide cost of the claim for  
38 reimbursement does not exceed one million dollars (\$1,000,000),



1 reimbursement shall be made from the State Mandates Claims  
2 Fund.

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