ASSEMBLY BILL No. 2750

Introduced by Assembly Member Steinberg

February 20, 2004

An act to add Section 273 to the Labor Code, relating to state employees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2750, as introduced, Steinberg. State employees: compensation.

Existing law provides that no state officer or employee shall be deemed to have a break in service or to have terminated his or her employment, for any purpose, nor to have incurred any change in his or her authority, status, or jurisdiction or in his or her salary or other conditions of employment, solely because of the failure to enact a Budget Act for a fiscal year prior to the beginning of that fiscal year.

This bill would state the intent of the Legislature to implement the rulings of Biggs v. Wilson (9th Cir. 1993) 1 F.3d 1537 and White v. Davis (2003) 30 Cal.4th 528 as part of the statutory law of the state. The bill would require, for any period on or after July 1 of a fiscal year until the operative date of the annual Budget Act for that fiscal year, that the Controller consider any nonexempt state employee who is entitled to compensation for overtime work as coming within the class of employees who are reasonably anticipated to work overtime and thereby entitled, pursuant to the federal Fair Labor Standards Act, to receive full, regular wages for all straight-time hours that the employee is scheduled to work. It would authorize a state employee to bring an action in a superior court pursuant to the bill to enforce his or her rights

and those of other affected state employees upon the failure of a state official to comply with the requirements of the bill.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $^{2}/_{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. (a) The Legislature finds and declares the following:

(1) The United States Court of Appeals, in Biggs v. Wilson (9th Cir. 1993) 1 F.3d 1537, held that the federal Fair Labor Standards Act (FLSA) (29 U.S.C. Sec. 201 and following) requires an employee's wage to be paid on the employee's regular payday regardless of whether the Budget Bill for the relevant fiscal year has been enacted. Subsequently, the California Supreme Court, in White v. Davis (2003) 30 Cal.4th 528, determined that the state, in the absence of passage of the Budget Bill, would be in compliance with applicable provisions of the FLSA if the state (A) pays full regular wages and overtime compensation to nonexempt state employees who it reasonably anticipates will work overtime during a given pay period, (B) pays minimum wage rate for all straight-time hours an employee is scheduled to work during the pay period to those nonexempt employees who it reasonably anticipates will not work overtime during a given pay period, and (C) in the following pay period, pays employees all additional sums that are due under the FLSA for the prior pay period based on information that the state obtains through reporting forms that it collects on or immediately following the preceding payday.

(2) Because, in the administration of the state payroll system, there is no feasible way to reasonably anticipate who, in a workforce of approximately 150,000 full-time employees, will work overtime during any given pay period, it is reasonable and necessary to consider any nonexempt state employee who is authorized to work overtime as coming within the class of employees who are reasonably anticipated to work overtime and thereby be entitled to receive full, regular wages for all straight-time hours that the employee is scheduled to work.

(3) It is the intent of the Legislature in enacting Section 273 of the Labor Code to implement the rulings of the United States Court of Appeals in Biggs v. Wilson and the California Supreme Court in White v. Davis as a part of the statutory law of this state.

SEC. 2. Section 273 is added to the Labor Code, to read:

273. (a) The following apply for any period on and after July 1 of a fiscal year until the operative date of the annual Budget Act for that fiscal year:

(1) Notwithstanding any other provision of this code, for purposes of implementing the requirements of the Fair Labor Standards Act (29 U.S.C. Sec. 201 and following) the Controller shall consider any state employee who is not exempt from that act and is entitled to compensation for overtime work as coming within the class of employees who are reasonably anticipated to work overtime and are thereby entitled to receive full, regular wages for all straight-time hours that the employee is scheduled to work.

(2) For purposes of paragraph (1), the compensation and contribution for employee benefits for represented state employees who are covered by an applicable memorandum of understanding that has been approved by the Legislature shall be at a rate consistent with the memorandum of understanding, and compensation and contribution for employee benefits for state employees excluded from collective bargaining shall be at the rate approved for that purpose by the Department of Personnel Administration prior to the commencement of the fiscal year. As to represented state employees for whom there is no memorandum of understanding in effect, or excluded state employees for whom the department has not approved a compensation package, compensation and contribution for employee benefits shall be at the applicable rate in effect at the expiration of the last fiscal year for which an annual Budget Act was enacted.

(b) Upon the failure of a state official to comply with the requirements of this section, a state employee may bring an action in the superior court pursuant to this section in order to enforce his or her rights and those of other affected state employees.

(c) ‘‘State employee,’’ for the purposes of this section, means an employee defined in Section 18526 or an officer or employee of an executive or judicial department of the state.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that state employees are compensated for work performed during a fiscal year for which a Budget Act has not been enacted in a way that avoids confusion and additional administrative expense, and ensures equitable treatment of all state employees, it is necessary that this act take effect immediately.

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