

ASSEMBLY BILL

No. 2236

Introduced by Assembly Member Hueso

February 24, 2012

An act to amend Sections 45127, 45128, 45132, 45180, 88026, 88027, 88040, and 88180 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2236, as introduced, Hueso. School employees: employment.

(1) Existing law requires the governing board of a school district or community college district to establish the workday and workweek schedules of a classified employee, as defined. Existing law requires the regular workweek of a classified employee to be 40 hours and the regular workday of a classified employee to be 8 hours. Existing law authorizes a governing board of a school district or community college district to establish alternate workweek schedules of classified employees provided the establishment of such a workweek has the concurrence of the concerned employee or employee organization, as specified.

This bill would require the regular workweek schedule of a school district employee in a position not requiring certification qualifications, as specified, and a community college employee in a nonacademic position, as specified, to be 40 hours a week and the regular workday schedule to be 8 hours a day. The bill would authorize a governing board of a school district or community college district to establish alternate workday and workweek schedules of school district employees, as specified, and community college district employees in nonacademic positions provided the establishment of such a workweek has the

concurrence of the concerned employee or employee organization, as specified.

(2) Existing law requires the governing board of a school district or community college district to provide the extent to which, and establish the method by which, ordered overtime is compensated for all classified positions or for certain classes of classified positions, as specified.

This bill would require the governing board of a school district to provide the extent to which, and establish the method by which, ordered overtime is compensated for all positions not requiring certification or for certain classes of positions not requiring certification. The bill also would require the governing board of a community college district to provide the extent to which, and establish the method by which, ordered overtime is compensated for all nonacademic positions or for certain classes of nonacademic positions.

(3) Existing law requires the governing board of every school district and community college district, or the personnel commission in any merit system school district or community college district, to determine the practices relating to morning and night shift salary differentials in the private employment fields in which it must compete for employees for its classified staff and to consider the advisability of providing comparable salary differentials for its classified staff. Existing law defines “shift” as the number of hours worked and includes a duty-free meal period, as specified.

This bill would revise the definition of “shift” to also include a duty-free rest period, as specified, and would provide that an employee who is not provided a meal period or rest period would be required to receive one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal period or rest period is not provided.

The bill also would make technical, nonsubstantive changes to these provisions.

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

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

- 1 SECTION 1. Section 45127 of the Education Code is amended
- 2 to read:
- 3 45127. (a) The workweek of a classified employee, as defined
- 4 in Section 45103 or 45256, *and an employee in a position not*

1 *requiring certification qualifications who is excluded from*
 2 *classified service pursuant to subdivision (b) of Section 45103 or*
 3 *subdivision (b) of Section 45256 shall be 40 hours. The workday*
 4 *shall be eight hours. These provisions do not restrict the extension*
 5 *of a regular workday or workweek on an overtime basis if it is*
 6 *necessary to carry on the business of the district. This section does*
 7 *not bar the district from establishing a workday of less than eight*
 8 *hours or a workweek of less than 40 hours for all or any of its*
 9 ~~classified~~ *positions not requiring certification.*

10 (b) Notwithstanding this section and Section 45128, a governing
 11 board may, with the approval of the personnel commission, where
 12 applicable, exempt specific classes of positions from compensation
 13 for overtime in excess of eight hours in one day, provided that
 14 hours worked in excess of 40 in a calendar week shall be
 15 compensated on an overtime basis. This exemption applies only
 16 to those classes that the governing board and personnel
 17 commission, where applicable, specifically find to be subject to
 18 fluctuations in daily working hours not susceptible to administrative
 19 control, such as security patrol and recreation classes, but shall
 20 not include food service and transportation classes.

21 (c) This section applies to *school* districts that have adopted the
 22 merit system in the same manner and effect as if it were a part of
 23 Article 6 (commencing with Section 45240).

24 SEC. 2. Section 45128 of the Education Code is amended to
 25 read:

26 45128. (a) The governing board of each *school* district shall
 27 provide the extent to which, and establish the method by which,
 28 ordered overtime is compensated. The *governing* board shall
 29 provide for such compensation or compensatory time off at a rate
 30 at least equal to time and one-half the regular rate of pay of the
 31 employee designated and authorized to perform the overtime.

32 **Overtime**

33 (b) *For purposes of this section, overtime* is defined to include
 34 any time required to be worked in excess of eight hours in any one
 35 day and in excess of 40 hours in any calendar week. If a governing
 36 board establishes a workday of less than eight hours but seven
 37 hours or more and a workweek of less than 40 hours but 35 hours
 38 or more for all of its ~~classified~~ *positions not requiring certification*
 39 or for certain classes of ~~classified~~ *positions not requiring*
 40 *certification*, all time worked in excess of the established workday

1 and workweek shall be deemed to be overtime. The foregoing
 2 provisions do not apply to ~~classified~~ positions *not requiring*
 3 *certification* for which a workday of fewer than seven hours and
 4 a workweek of fewer than 35 hours has been established, nor to
 5 positions for which a workday of eight hours and a workweek of
 6 40 hours has been established, but in which positions employees
 7 are temporarily assigned to work fewer than eight hours per day
 8 or 40 hours per week when such reduction in hours is necessary
 9 to avoid layoffs for lack of work or lack of funds and the consent
 10 of the majority of affected employees to such reduction in hours
 11 has been first obtained.

12 ~~For~~

13 (c) *For* the purpose of computing the number of hours worked,
 14 time during which an employee is excused from work because of
 15 holidays, sick leave, vacation, compensating time off, or other paid
 16 leave of absence shall be considered as time worked by the
 17 employee.

18 ~~This~~

19 (d) *This* section shall apply to *school* districts that have adopted
 20 the merit system in the same manner and effect as if it were a part
 21 of Article 6 (commencing with Section 45240) of this chapter.

22 SEC. 3. Section 45132 of the Education Code is amended to
 23 read:

24 45132. (a) Notwithstanding the provisions of Section 45131,
 25 a governing board of a *school* district may establish a
 26 10-hour-per-day, 40-hour, four-consecutive-day workweek for all,
 27 or certain classes of its employees, or for employees within a class
 28 when, by reason of the work location and duties actually performed
 29 by such employees, their services are not required for a workweek
 30 of five consecutive days, provided the establishment of such a
 31 workweek has the concurrence of the concerned employee, class
 32 of employees, or classes of employees as ascertained through the
 33 employee organization representing a majority of the concerned
 34 employees or class or classes; of employees, as determined by the
 35 payroll deduction authorizations for dues in ~~classified~~ employee
 36 organizations on file with the district on the last day of the month
 37 next preceding the date the *governing* board action was taken.

38 ~~Where~~

39 (b) *Where* a *governing* board has previously established the
 40 workweek of not less than 35 hours, it may require the established

1 workweek to be performed in four consecutive days by any class
2 or classes of employees or by employees within a class, when by
3 reason of the work location and duties actually performed by such
4 employees their services are not required for a workweek of five
5 consecutive days, with the concurrence of employee personnel as
6 provided ~~herein~~ *in this section.*

7 ~~When~~

8 (c) *When* a four-day workweek is established, the overtime rate
9 shall be paid for all hours worked in excess of the required
10 workday, which shall not exceed 10 hours. Work performed on
11 the fifth, sixth, and seventh days shall be compensated for at a rate
12 equal to 1½ times the regular rate of pay of the employee
13 designated and authorized to perform the work.

14 ~~An~~

15 (d) *An* employee working an average workday of five hours or
16 less during a workweek shall, for any work required to be
17 performed on the sixth or seventh day following the
18 commencement of his workweek, be compensated for at a rate
19 equal to 1½ times the regular rate of pay of the employee
20 designated and authorized to perform the work.

21 ~~This~~

22 (e) *This* section shall apply to *school* districts that have adopted
23 the merit system in the same manner and effect as if it were a part
24 of Article 6 (commencing with Section 45240) of this chapter.

25 SEC. 4. Section 45180 of the Education Code is amended to
26 read:

27 45180. For purposes of this article, the following definitions
28 shall apply unless the context indicates otherwise:

29 (a) “Differential compensation” means either a reduction in the
30 number of hours required to be actually worked or an increase in
31 salary.

32 (b) (1) “Shift” means the number of hours worked and shall
33 include ~~a~~ *the following:*

34 (A) A duty-free meal period of not less than one-half hour *for*
35 *employees working more than six hours*, which, in the case of a
36 seven- or eight-hour shift, shall occur approximately at the
37 midpoint of the shift. ~~This subdivision shall not apply to employees~~
38 ~~working six hours or less, or assigned to a split shift.~~

39 (B) *A duty-free rest period of 10 minutes for every four hours*
40 *of work or major fraction thereof for employees working three and*

1 *one-half hours or more, which shall occur approximately at the*
 2 *midpoint of each four-hour period.*

3 (2) *An employee who is not provided a meal period or rest*
 4 *period in accordance with this subdivision shall receive one*
 5 *additional hour of pay at the employee’s regular rate of*
 6 *compensation for each workday that the meal period or rest period*
 7 *is not provided.*

8 SEC. 5. Section 88026 of the Education Code is amended to
 9 read:

10 88026. (a) The workweek of a classified employee, as defined
 11 in Section ~~88033~~ 88003 or Section 88076, *and an employee in a*
 12 *nonacademic position who is excluded from the classified service*
 13 *pursuant to Section 88003 or subdivision (b) of Section 88076*
 14 shall be 40 hours. The workday shall be eight hours. These
 15 provisions do not restrict the ~~extension~~ *extension* of a regular
 16 workday or workweek on an overtime basis ~~when such~~ *if it* is
 17 necessary to carry on the business of the district. Nothing in this
 18 section shall be deemed to bar the district from establishing a
 19 workday of less than eight hours or a workweek of less than 40
 20 hours for all or any of its ~~classified~~ *nonacademic* positions.

21 ~~Notwithstanding~~

22 (b) *Notwithstanding* the provisions of this section and Section
 23 88027, a governing board may, with the approval of the personnel
 24 commission, where applicable, exempt specific classes of positions
 25 from compensation for overtime in excess of eight hours in one
 26 day, provided that hours worked in excess of 40 in a calendar week
 27 shall be compensated on an overtime basis. Such exemption shall
 28 be applied only to those classes ~~which~~ *that* the governing board
 29 and personnel commission, where applicable, specifically find to
 30 be subject to fluctuations in daily working hours not susceptible
 31 to administrative control, such as security patrol and recreation
 32 classes, but shall not include food-service and transportation
 33 classes.

34 ~~This~~

35 (c) *This* section shall apply to districts that have adopted the
 36 merit system in the same manner and effect as if it were a part of
 37 Article 3 (commencing with Section 88060) of this chapter.

38 SEC. 6. Section 88027 of the Education Code is amended to
 39 read:

1 88027. (a) The governing board of each community college
2 district shall provide the extent to which, and establish the method
3 by which, ordered overtime is compensated. The *governing* board
4 shall provide for such compensation or compensatory time off at
5 a rate at least equal to time and one-half the regular rate of pay of
6 the employee designated and authorized to perform the overtime.

7 **Overtime**

8 (b) *For purposes of this section, overtime* is defined to include
9 any time required to be worked in excess of eight hours in any one
10 day and in excess of 40 hours in any calendar week. If a governing
11 board establishes a workday of less than eight hours but seven
12 hours or more and a workweek of less than 40 hours but 35 hours
13 or more for all of its ~~classified~~ *nonacademic* positions or for certain
14 classes of ~~classified~~ *nonacademic* positions, all time worked in
15 excess of the established workday and workweek shall be deemed
16 to be overtime. The foregoing provisions do not apply to ~~classified~~
17 *nonacademic* positions for which a workday of fewer than seven
18 hours and a workweek of fewer than 35 hours has been established,
19 nor to positions for which a workday of eight hours and a
20 workweek of 40 hours has been established, but in which positions
21 employees are temporarily assigned to work fewer than eight hours
22 per day or 40 hours per week when such reduction in hours is
23 necessary to avoid layoffs for lack of work or lack of funds and
24 the consent of the majority of affected employees to such reduction
25 in hours has been first obtained.

26 **For**

27 (c) *For the purpose of computing the number of hours worked,*
28 *time during which an employee is excused from work because of*
29 *holidays, sick leave, vacation, compensating time off, or other paid*
30 *leave of absence shall be considered as time worked by the*
31 *employee.*

32 **This**

33 (d) *This section shall apply to districts that have adopted the*
34 *merit system in the same manner and effect as if it were a part of*
35 *Article 3 (commencing with Section 88060) of this chapter.*

36 SEC. 7. Section 88040 of the Education Code is amended to
37 read:

38 88040. (a) (1) Notwithstanding Section 88026, the governing
39 board of a community college district may establish the workday
40 and workweek schedules of ~~classified~~ *nonacademic* employees

1 with the concurrence of the employee organization, or in the
2 absence of an employee organization, the concurrence of the
3 affected employee.

4 (2) Notwithstanding Section 88027, if the governing board of
5 a community college district establishes a workday or workweek
6 schedule, or both, pursuant to this section, the overtime rate shall
7 be paid for all hours worked in excess of the required workday or
8 a workweek of 40 hours.

9 (b) This section applies to districts that have adopted the merit
10 system in the same manner and effect as if it were a part of Article
11 3 (commencing with Section 88060).

12 SEC. 8. Section 88180 of the Education Code is amended to
13 read:

14 88180. For purposes of this article, the following definitions
15 shall apply unless the context indicates otherwise:

16 (a) "Differential compensation" means either a reduction in the
17 number of hours required to be actually worked or an increase in
18 salary.

19 (b) (1) "Shift" means the number of hours worked and shall
20 include *a the following:*

21 (A) *A duty-free meal period of not less than one-half hour for*
22 *employees working more than six hours, which, in the case of a*
23 *seven- or eight-hour shift, shall occur approximately at the*
24 *midpoint of the shift. ~~This subdivision shall not apply to employees~~*
25 *working six hours or less, or assigned to a split shift.*

26 (B) *A duty-free rest period of 10 minutes for every four hours*
27 *of work or major fraction thereof for employees working three and*
28 *one-half hours or more, which shall occur approximately at the*
29 *midpoint of each four-hour period.*

30 (2) *An employee who is not provided a meal period or rest*
31 *period in accordance with this subdivision shall receive one*
32 *additional hour of pay at the employee's regular rate of*
33 *compensation for each workday that the meal period or rest period*
34 *is not provided.*

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