

Introduced by Senator Wyland

February 16, 2012

An act to amend Section 511 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1093, as introduced, Wyland. Employment: alternate workweek. Under existing law, an alternative workweek schedule proposed by an employer may be adopted through a $\frac{2}{3}$ majority vote of the employer's employees in a secret ballot. Existing law provides that any alternative workweek schedule that was authorized pursuant to specified provisions and in effect on January 1, 2000, may be repealed by the affected employees.

This bill would make technical, nonsubstantive changes to those 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 511 of the Labor Code is amended to
- 2 read:
- 3 511. (a) Upon the proposal of an employer, the employees of
- 4 an employer may adopt a regularly scheduled alternative workweek
- 5 that authorizes work by the affected employees for no longer than
- 6 10 hours per day within a 40-hour workweek without the payment
- 7 to the affected employees of an overtime rate of compensation
- 8 pursuant to this section. A proposal to adopt an alternative
- 9 workweek schedule shall be deemed adopted only if it receives

1 approval in a secret ballot election by at least two-thirds of affected
2 employees in a readily identifiable work unit. The regularly
3 scheduled alternative workweek proposed by an employer for
4 adoption by employees may be a single work schedule that would
5 become the standard schedule for workers in the work unit, or a
6 menu of work schedule options, from which each employee in the
7 unit would be entitled to choose. Notwithstanding subdivision (c)
8 of Section 500, the menu of work schedule options may include a
9 regular schedule of eight-hour days that are compensated in
10 accordance with subdivision (a) of Section 510. Employees who
11 adopt a menu of work schedule options may, with employer
12 consent, move from one schedule option to another on a weekly
13 basis.

14 (b) An affected employee working longer than eight hours but
15 not more than 12 hours in a day pursuant to an alternative
16 workweek schedule adopted pursuant to this section shall be paid
17 an overtime rate of compensation of no less than one and one-half
18 times the regular rate of pay of the employee for any work in excess
19 of the regularly scheduled hours established by the alternative
20 workweek agreement and for any work in excess of 40 hours per
21 week. An overtime rate of compensation of no less than double
22 the regular rate of pay of the employee shall be paid for any work
23 in excess of 12 hours per day and for any work in excess of eight
24 hours on those days worked beyond the regularly scheduled
25 workdays established by the alternative workweek agreement.
26 Nothing in this section requires an employer to combine more than
27 one rate of overtime compensation in order to calculate the amount
28 to be paid to an employee for any hour of overtime work.

29 (c) An employer shall not reduce an employee's regular rate of
30 hourly pay as a result of the adoption, repeal, or nullification of
31 an alternative workweek schedule.

32 (d) An employer shall make a reasonable effort to find a work
33 schedule not to exceed eight hours in a workday, in order to
34 accommodate any affected employee who was eligible to vote in
35 an election authorized by this section and who is unable to work
36 the alternative schedule hours established as the result of that
37 election. An employer shall be permitted to provide a work
38 schedule not to exceed eight hours in a workday to accommodate
39 any employee who was hired after the date of the election and who
40 is unable to work the alternative schedule established as the result

1 of that election. An employer shall explore any available reasonable
2 alternative means of accommodating the religious belief or
3 observance of an affected employee that conflicts with an adopted
4 alternative workweek schedule, in the manner provided by
5 subdivision (j) of Section 12940 of the Government Code.

6 (e) The results of any election conducted pursuant to this section
7 shall be reported by an employer to the Division of Labor Statistics
8 and Research within 30 days after the results are final.

9 (f) ~~Any type of~~An alternative workweek schedule that is
10 authorized by this code and that was in effect on January 1, 2000,
11 may be repealed by the affected employees pursuant to this section.
12 ~~Any~~ An alternative workweek schedule that was adopted pursuant
13 to Wage Order ~~Numbers~~ *Number* 1, 4, 5, 7, or 9 of the Industrial
14 Welfare Commission is null and void, except for an alternative
15 workweek providing for a regular schedule of no more than 10
16 hours' work in a workday that was adopted by a two-thirds vote
17 of affected employees in a secret ballot election pursuant to wage
18 orders of the Industrial Welfare Commission in effect prior to
19 1998. This subdivision does not apply to exemptions authorized
20 pursuant to Section 515.

21 (g) Notwithstanding subdivision (f), an alternative workweek
22 schedule in the health care industry adopted by a two-thirds vote
23 of affected employees in a secret ballot election pursuant to Wage
24 Order Numbers 4 and 5 in effect prior to 1998 that provided for
25 workdays exceeding 10 hours but not exceeding 12 hours in a day
26 without the payment of overtime compensation shall be valid until
27 July 1, 2000. An employer in the health care industry shall make
28 a reasonable effort to accommodate any employee in the health
29 care industry who is unable to work the alternative schedule
30 established as the result of a valid election held in accordance with
31 provisions of Wage Order Number 4 or 5 that were in effect prior
32 to 1998.

33 (h) Notwithstanding subdivision (f), if an employee is
34 voluntarily working an alternative workweek schedule providing
35 for a regular work schedule of not more than 10 hours' work in a
36 workday as of July 1, 1999, an employee may continue to work
37 that alternative workweek schedule without the entitlement of the
38 payment of daily overtime compensation for the hours provided
39 in that schedule if the employer approves a written request of the
40 employee to work that schedule.

1 (i) For purposes of this section, “work unit” includes a division,
2 a department, a job classification, a shift, a separate physical
3 location, or a recognized subdivision thereof. A work unit may
4 consist of an individual employee as long as the criteria for an
5 identifiable work unit in this section *is* ~~are~~ met.

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