

Introduced by Senator Dutton

February 17, 2012

An act to amend Section 511 of, and to amend, repeal, and add Section 510 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1114, as introduced, Dutton. Employment: overtime compensation.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption, by 2/3 of employees in a work unit, of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.

This bill, until January 1, 2015, instead would establish 40 hours as a week's work and require payment of prescribed overtime compensation for hours worked in excess of 10 hours in one workday. The bill would also make conforming changes.

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 510 of the Labor Code is amended to  
 2 read:  
 3 510. (a) ~~Eight~~ Forty hours of labor constitutes a day's week's  
 4 work. Any work in excess of ~~eight~~ 10 hours in one workday and  
 5 any work in excess of 40 hours in any one workweek and the first  
 6 ~~eight~~ 10 hours worked on the seventh day of work in any one

1 workweek shall be compensated at the rate of no less than one and  
2 one-half times the regular rate of pay for an employee. Any work  
3 in excess of 12 hours in one day shall be compensated at the rate  
4 of no less than twice the regular rate of pay for an employee. In  
5 addition, any work in excess of ~~eight~~ 10 hours on any seventh day  
6 of a workweek shall be compensated at the rate of no less than  
7 twice the regular rate of pay of an employee. Nothing in this section  
8 requires an employer to combine more than one rate of overtime  
9 compensation in order to calculate the amount to be paid to an  
10 employee for any hour of overtime work. The requirements of this  
11 section do not apply to the payment of overtime compensation to  
12 an employee working pursuant to any of the following:

13 ~~(1) An alternative workweek schedule adopted pursuant to~~  
14 ~~Section 511.~~

15 ~~(2)~~

16 (1) An alternative workweek schedule adopted pursuant to a  
17 collective bargaining agreement pursuant to Section 514.

18 ~~(3)~~

19 (2) An alternative workweek schedule to which this chapter is  
20 inapplicable pursuant to Section 554.

21 (b) Time spent commuting to and from the first place at which  
22 an employee's presence is required by the employer shall not be  
23 considered to be a part of a day's work, when the employee  
24 commutes in a vehicle that is owned, leased, or subsidized by the  
25 employer and is used for the purpose of ridesharing, as defined in  
26 Section 522 of the Vehicle Code.

27 (c) This section does not affect, change, or limit an employer's  
28 liability under the workers' compensation law.

29 *(d) This section shall remain in effect only until January 1, 2015,*  
30 *and as of that date is repealed, unless a later enacted statute, that*  
31 *is enacted before January 1, 2015, deletes or extends that date.*

32 SEC. 2. Section 510 is added to the Labor Code, to read:

33 510. (a) Eight hours of labor constitutes a day's work. Any  
34 work in excess of eight hours in one workday and any work in  
35 excess of 40 hours in any one workweek and the first eight hours  
36 worked on the seventh day of work in any one workweek shall be  
37 compensated at the rate of no less than one and one-half times the  
38 regular rate of pay for an employee. Any work in excess of 12  
39 hours in one day shall be compensated at the rate of no less than  
40 twice the regular rate of pay for an employee. In addition, any

1 work in excess of eight hours on any seventh day of a workweek  
2 shall be compensated at the rate of no less than twice the regular  
3 rate of pay of an employee. Nothing in this section requires an  
4 employer to combine more than one rate of overtime compensation  
5 in order to calculate the amount to be paid to an employee for any  
6 hour of overtime work. The requirements of this section do not  
7 apply to the payment of overtime compensation to an employee  
8 working pursuant to any of the following:

9 (1) An alternative workweek schedule adopted pursuant to  
10 Section 511.

11 (2) An alternative workweek schedule adopted pursuant to a  
12 collective bargaining agreement pursuant to Section 514.

13 (3) An alternative workweek schedule to which this chapter is  
14 inapplicable pursuant to Section 554.

15 (b) Time spent commuting to and from the first place at which  
16 an employee's presence is required by the employer shall not be  
17 considered to be a part of a day's work, when the employee  
18 commutes in a vehicle that is owned, leased, or subsidized by the  
19 employer and is used for the purpose of ridesharing, as defined in  
20 Section 522 of the Vehicle Code.

21 (c) This section does not affect, change, or limit an employer's  
22 liability under the workers' compensation law.

23 (d) This section shall become operative on January 1, 2015.

24 SEC. 3. Section 511 of the Labor Code is amended to read:

25 511. (a) Upon the proposal of an employer, the employees of  
26 an employer may adopt a regularly scheduled alternative workweek  
27 that authorizes work by the affected employees for no longer than  
28 10 hours per day within a 40-hour workweek without the payment  
29 to the affected employees of an overtime rate of compensation  
30 pursuant to this section. A proposal to adopt an alternative  
31 workweek schedule shall be deemed adopted only if it receives  
32 approval in a secret ballot election by at least two-thirds of affected  
33 employees in a readily identifiable work unit. The regularly  
34 scheduled alternative workweek proposed by an employer for  
35 adoption by employees may be a single work schedule that would  
36 become the standard schedule for workers in the work unit, or a  
37 menu of work schedule options, from which each employee in the  
38 unit would be entitled to choose. Notwithstanding subdivision (c)  
39 of Section 500, the menu of work schedule options may include a  
40 regular schedule of eight-hour days that are compensated in

1 accordance with subdivision (a) of Section 510. Employees who  
2 adopt a menu of work schedule options may, with employer  
3 consent, move from one schedule option to another on a weekly  
4 basis.

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

20 (c) An employer shall not reduce an employee’s regular rate of  
21 hourly pay as a result of the adoption, repeal, or nullification of  
22 an alternative workweek schedule.

23 (d) An employer shall make a reasonable effort to find a work  
24 schedule not to exceed eight hours in a workday, in order to  
25 accommodate any affected employee who was eligible to vote in  
26 an election authorized by this section and who is unable to work  
27 the alternative schedule hours established as the result of that  
28 election. An employer shall be permitted to provide a work  
29 schedule not to exceed eight hours in a workday to accommodate  
30 any employee who was hired after the date of the election and who  
31 is unable to work the alternative schedule established as the result  
32 of that election. An employer shall explore any available reasonable  
33 alternative means of accommodating the religious belief or  
34 observance of an affected employee that conflicts with an adopted  
35 alternative workweek schedule, in the manner provided by  
36 subdivision (j) of Section 12940 of the Government Code.

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

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

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

25 (h) Notwithstanding subdivision (f), if an employee is  
26 voluntarily working an alternative workweek schedule providing  
27 for a regular work schedule of not more than 10 hours' work in a  
28 workday as of July 1, 1999, an employee may continue to work  
29 that alternative workweek schedule without the entitlement of the  
30 payment of daily overtime compensation for the hours provided  
31 in that schedule if the employer approves a written request of the  
32 employee to work that schedule.

33 (i) For purposes of this section, "work unit" includes a division,  
34 a department, a job classification, a shift, a separate physical  
35 location, or a recognized subdivision thereof. A work unit may  
36 consist of an individual employee as long as the criteria for an  
37 identifiable work unit in this section is met.

1     (j) *This section shall be inoperative from January 1, 2013, to*  
2     *January 1, 2015, inclusive, and shall resume operation on January*  
3     *1, 2015.*

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