

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 907

Introduced by Assembly Member ~~Morrell~~ Conway

February 22, 2013

An act to amend Section ~~1771~~ of the Labor Code, relating to prevailing wages, ~~510~~ of, and to add Section 511.5 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 907, as amended, ~~Morrell~~ Conway. ~~Public works: prevailing wage rates. Employment: flexible work schedules.~~

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 $\frac{2}{3}$ 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 would permit an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and would allow an employer to implement this schedule without the obligation to pay overtime compensation for those additional hours in a workday. The bill would require the Division of Labor Standards Enforcement in the Department of Industrial Relations to enforce this provision and adopt regulations.

~~Existing law defines the term "public works" for purposes of requirements regarding the payment of prevailing wages, the regulation of working hours, and the securing of workers' compensation for public~~

~~works projects. Existing law further requires that, except as specified, not less than the general prevailing rate of per diem wages be paid to workers employed on public works projects, and imposes misdemeanor penalties for a violation of this requirement. Existing law exempts certain projects from the prevailing wage requirements, including public works projects of less than \$1,000.~~

~~This bill would make technical, nonsubstantive changes to those provisions:~~

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

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

- 1 SECTION 1. *This act shall be known and may be cited as the*
- 2 *Workplace Flexibility Act of 2013.*
- 3 SEC. 2. *The Legislature finds and declares all of the following:*
- 4 (a) *Small businesses and their workers suffer from outdated*
- 5 *and inefficient workplace and overtime rules that do not allow for*
- 6 *sufficient flexibility for employers and workers to schedule their*
- 7 *hours of work for mutual benefit.*
- 8 (b) *California overtime laws, which are unique in the country,*
- 9 *make it difficult for most employers to reach an agreement with*
- 10 *an individual worker that would allow a flexible work schedule.*
- 11 (c) *Existing law does not permit an employer to allow an*
- 12 *individual worker to choose a flexible work schedule of four*
- 13 *10-hour days per week without overtime being paid.*
- 14 (d) *As a consequence, millions of California workers do not*
- 15 *have the opportunity to take advantage of a flexible work schedule*
- 16 *that would benefit the workers and their families.*
- 17 (e) *Permitting workers to elect to work four 10-hour days per*
- 18 *week without the payment of overtime would allow them to spend*
- 19 *much-needed time with their families, lessen traffic congestion on*
- 20 *our crowded roads and highways, and would allow workers to*
- 21 *spend one day a week on personal matters, such as volunteering*
- 22 *at a child’s school, scheduling medical appointments, and attending*
- 23 *to other important family matters that often are difficult to schedule*
- 24 *with a five-day-per-week, eight-hour-per-day schedule.*
- 25 (f) *It is the intent of the Legislature in enacting the Workplace*
- 26 *Flexibility Act of 2013 to protect workers as follows:*

1 (1) A worker may not be forced to work more than eight hours
2 in a day without receiving overtime, but, instead, he or she may
3 request a flexible work schedule of up to four 10-hour days per
4 week and an employer may agree to this schedule without having
5 to pay overtime for the ninth and tenth hours worked per day in
6 that schedule.

7 (2) An employer will be required to pay overtime rates after 10
8 work hours in a day for workers who have chosen a flexible
9 schedule pursuant to this act.

10 (3) An employer will be required to pay double normal pay after
11 12 work hours in a day for a worker who has chosen a flexible
12 schedule under this act.

13 (4) Any worker, including one who chooses a flexible schedule
14 under this act, will receive overtime for any hours worked over 40
15 hours in a single week.

16 (g) Workplaces that are unionized already allow workers to
17 choose to work four 10-hour days; however, it is virtually
18 impossible for workers of nonunionized workplaces to enjoy this
19 benefit.

20 (h) No compelling public policy reason exists for this
21 discrepancy in the flexibility of work schedules between unionized
22 and nonunionized workers.

23 SEC. 3. Section 510 of the Labor Code is amended to read:

24 510. (a) Eight hours of labor constitutes a day's work. Any
25 work in excess of eight hours in one workday and any work in
26 excess of 40 hours in any one workweek and the first eight hours
27 worked on the seventh day of work in any one workweek shall be
28 compensated at the rate of no less than one and one-half times the
29 regular rate of pay for an employee. Any work in excess of 12
30 hours in one day shall be compensated at the rate of no less than
31 twice the regular rate of pay for an employee. In addition, any
32 work in excess of eight hours on any seventh day of a workweek
33 shall be compensated at the rate of no less than twice the regular
34 rate of pay of an employee. Nothing in this section requires an
35 employer to combine more than one rate of overtime compensation
36 in order to calculate the amount to be paid to an employee for any
37 hour of overtime work. The requirements of this section do not
38 apply to the payment of overtime compensation to an employee
39 working pursuant to any of the following:

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

3 (2) *An employee-selected flexible work schedule adopted*
4 *pursuant to Section 511.5.*

5 ~~(2)~~

6 (3) An alternative workweek schedule adopted pursuant to a
7 collective bargaining agreement pursuant to Section 514.

8 ~~(3)~~

9 (4) An alternative workweek schedule to which this chapter is
10 inapplicable pursuant to Section 554.

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

17 (c) This section does not affect, change, or limit an employer’s
18 liability under the workers’ compensation law.

19 *SEC. 4. Section 511.5 is added to the Labor Code, to read:*

20 *511.5. (a) Notwithstanding Section 510 or any other law or*
21 *order of the Industrial Welfare Commission, an individual*
22 *nonexempt employee may work up to 10 hours per workday without*
23 *any obligation on the part of the employer to pay an overtime rate*
24 *of compensation, except as provided in subdivision (b), if the*
25 *employee requests this schedule in writing and the employer*
26 *approves the request. This shall be referred to as an overtime*
27 *exemption for an employee-selected flexible work schedule.*

28 *(b) If an employee-selected flexible work schedule is adopted,*
29 *the employer shall pay overtime at one and one-half times the*
30 *employee’s regular rate of pay for all hours worked over 40 hours*
31 *in a workweek or over 10 hours in a workday, whichever is the*
32 *greater number of hours. All work performed in excess of 12 hours*
33 *per workday and in excess of eight hours on a fifth, sixth, or*
34 *seventh day in the workweek shall be paid at double the employee’s*
35 *regular rate of pay.*

36 *(c) An employer may inform its employees that it is willing to*
37 *consider employee requests to work an employee-selected flexible*
38 *work schedule, but shall not induce a request by promising an*
39 *employment benefit or threatening an employment detriment.*

1 (d) An employee or employer may discontinue an
2 employee-selected flexible work schedule at any time by giving
3 written notice to the other party. The request will be effective the
4 first day of the next pay period or the fifth day after notice is given
5 if there are fewer than five days before the start of the next pay
6 period, unless otherwise agreed to by the employer and the
7 employee.

8 (e) This section does not apply to any employee covered by a
9 valid collective bargaining agreement or employed by the state,
10 a city, county, city and county, district, municipality, or other
11 public, quasi-public, or municipal corporation, or any political
12 subdivision of this state.

13 (f) This section shall be liberally construed to accomplish its
14 purposes.

15 (g) (1) The Division of Labor Standards Enforcement shall
16 enforce this section and shall adopt or revise regulations in a
17 manner necessary to conform and implement this section.

18 (2) This section shall prevail over any inconsistent provisions
19 in any wage order of the Industrial Welfare Commission.

20 SEC. 5. The provisions of this act are severable. If any
21 provision of this act or its application is held invalid, that invalidity
22 shall not affect other provisions or applications that can be given
23 effect without the invalid provision or application.

24 SECTION 1. ~~Section 1771 of the Labor Code is amended to~~
25 ~~read:~~

26 ~~1771. (a) Except for public works projects of one thousand~~
27 ~~dollars (\$1,000) or less, not less than the general prevailing rate~~
28 ~~of per diem wages for work of a similar character in the locality~~
29 ~~in which the public work is performed, and not less than the general~~
30 ~~prevailing rate of per diem wages for holiday and overtime work~~
31 ~~fixed as provided in this chapter, shall be paid to a worker~~
32 ~~employed on a public works project.~~

33 ~~(b) This section is applicable only to work performed under~~
34 ~~contract, and is not applicable to work carried out by a public~~
35 ~~agency with its own forces. This section is applicable to contracts~~
36 ~~let for maintenance work.~~